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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 17th December 1956

**S.R.O. 3188.**—Whereas the election of Shri Tara Chand Maheswari son of Shri Laxmi Narain and Shri Baiju Ram son of Shri Chhedan as members of the Legislative Assembly of the State of Uttar Pradesh from the Sidhauri (West) double-member Constituency of that Assembly was called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Radha Krishna Shukla son of Shri Gundi Lal Village and Post Office Kamlapur, District Sitapur and Shri Vishwaram son of Shri Teji, Village and Post Office Babupur, District Sitapur;

And whereas the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby published the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL (DISTRICT JUDGE'S COURT) LUCKNOW

PRESENT

Sri Ambika Prasad Srivastava, (District & Sessions Judge, Lucknow).

Chairman.

Sri K. C. Srivastava, (Retired District Judge).

Member.

Sri S. N. Roy Advocate.

Member.

ELECTION PETITION NO. 12 OF 1955.

1. Sri Radha Krishna Shukla s/o Sri Gundi Lal, Village and Post Office Kamlapur, District Sitapur.
2. Sri Vishwaram s/o Sri Teji, Village and Post Office Babupur, District Sitapur.—Petitioners.

} Petitioners.

## Versus

1. Sri Tara Chand Maheshwari s/o Sri Lakshmi Narain, Village & Post Office Sidhauri, District Sitapur.
2. Sri Baiju Ram s/o Chhedan, Village Jatha, Post Office Sidhauri, District Sitapur.
3. Prabhu Dayal s/o Kirha, Village Ahmadpur Dhakhwa, Post Office Bhandia, District Sitapur.
4. Mahabir Prasad s/c Shivacharan Lal, Village and Post Office Sidhauri, District Sitapur.
5. Holi Ram s/o Lalta, Village and Post Office Babupur, District Sitapur.
6. Nilkanth s/o Tilak, Village Sanjha hamlet of Manjhpura, Post Office Sidhauri, District Sitapur.
7. Satnu s/o Puran, Village Jatha, Post Office Sidhauri District Sitapur.
8. Lakshmi Chand, s/o Sukhi Lal, Thompsonganj, Post Office Sitapur, District Sitapur.

Respondents.

For the petitioners.—Sri Jai Shankar Trivedi and Sri A. M. Naqvi.

For the respondents Nos. 1 and 2.—Sri Mahabir Prasad Srivastava and Sri Umesh Chandra Srivastava.

## JUDGMENT

This is an election petition filed under section 81 of the Representation of the People Act. It relates to the bye-election held on 27th February 1955 in respect of the Sidhauri (West) Double Member Constituency. The bye-election became necessary because the previous election was set aside as a result of an election petition. This time there were altogether ten candidates. Two of them are now the petitioners. The remaining 8 are impleaded as respondents Nos. 1 to 8. Respondent Nos. 4 to 7 withdrew their nomination before the date prescribed for withdrawals. Respondent No. 8's nomination paper had been rejected. When the result of the bye-election was announced on 2nd March 1955, the respondents Nos. 1 and 2 were declared duly elected. The number of votes which the contesting candidates had secured were as follows:—

Name of candidate	Valid	Rejected
1. Sri Baiju Ram Respondent No. 2 (Congress)	31010	1596
2. Sri Tara Chand Maheshwari Respondent No. 1. (Congress)	29472	1129
3. Sri Radha Krishna Shukla Petitioner No. 1. (P.S.P.).	27734	1284
4. Sri Vishwa Ram Petitioner No. 2. (P.S.P.).	24027	999
5. Sri Prabhu Dayal Respondent No. 3. (Independent.)	7332	371

The respondents Nos. 1 and 2 having secured the largest number of votes were declared duly elected. The present petition was filed before the Election Commission, India on 17th June 1955, and by notification No. 82/12/55/8693 dated August 1, 1955, the petition was referred to this Tribunal for disposal.

The petitioners prayed that the election of the respondents Nos. 1 and 2 be declared wholly void. Bereft of repetition and verbosity the main grounds on which the prayer is made are:—

1. that the election has not been a free election by reason of extensive prevalence of threat, bribery and undue influence. In particular it is alleged:—
  - (a) that the respondents Nos. 1 and 2, their workers and agents along with Government officials openly gave out that no development schemes would be undertaken in the constituency unless and until the electors voted for the respondent Nos. 1 and 2 because the Government was a Congress Government. Such schemes would materialise only if the respondents Nos. 1 and 2 got elected. Promises were held out that hospitals, panchayat ghars, schools and seed-stores etc. would be built in case people voted for the respondents Nos. 1 and 2 and it was said that they had not been built hitherto because in the previous election people had not voted

- for the Congress candidate. Details of this are mentioned in lists A, B, E and I annexed to the petition.
- (b) that a slogan 'Jo vote deho jhopariya man to jooto parihen khopariya man' was shouted by the workers and agents of the respondents Nos. 1 and 2 at the places and on the dates mentioned in list C annexed to the petition. The intention was to give a general impression to the electorate that if they voted for the petitioners who were the rival candidates with hut as their symbol, they would be shoebeaten.
  - (c) At Mahmudabad on 24th November 1954 the workers of the respondents Nos. 1 and 2 mentioned in list D annexed to the petition had given out that the construction of the road and the zenana hospital had been delayed because people had not voted for the Congress candidate at the previous election and that they would be completed if they cast their votes in favour of the respondents Nos. 1 and 2 in the bye-election in dispute.
  - (d) Undue influence was exercised over the voters by administering oath to them in temples before Deities and with water that they would vote for the Congress candidates. Details are given in list F of the petition.
  - (e) The petitioner No. 2 Sri Vishwa Ram was a teacher in the Junior High School Saraiyan. The Secretary of the School was a Congress worker. He threatened Sri Vishwa Ram that he would be turned out of the school if he contemplated the election and when Sri Vishwa Ram refused to withdraw his nomination paper, he was actually turned out of the School. All this was done with the connivance of the respondent No. 1.
  - (f) Votes were obtained by the respondents Nos. 1 and 2 on promises of getting licences for firearms, fireworks etc. and by promising jobs to the electors. Particulars are given in list G annexed to the petition.
  - (g) Identity slips were distributed among the electors. The houses of some electors who refused to accept the identity slips issued by the Congress candidates were burnt. The leg of a horse belonging to an elector was chopped off on the same account. List H contains the details of these items.
  - (h) Sri Banarsi Das, Deputy Minister of the U.P. Government who was an active worker of the respondents Nos. 1 and 2 attended meetings at Sidhauli, Mahmudabad, Labarha and Bari and exhorted people to vote for the Congress candidates. At Bari he promised to provide a midwife for the hospital there and at Mahmudabad he promised to provide a well equipped hospital. These things were to be provided in case people accepted respondents Nos. 1 and 2 as their representatives at the Assembly.
  - (i) Sri C. B. Gupta, Minister of the U.P. State, canvassed for the respondent No. 1 and exercised undue influence on the voters. He opened the Zohra Female Hospital at Mahmudabad and attended a meeting organised by the District Congress Committee. The meeting was attended by and had been organised with the co-operation of the Government servants. Some workers of the P.S.P. who were taking out a procession at the time were attacked and beaten. The matter was brought to the notice of Sri C. B. Gupta who approved of the action and eulogized the services of the persons who had committed the assault. Details are given in list J annexed to the petition.
  - (j) Sri Ram Murti, Deputy Minister of the State Government did propaganda for the respondents Nos. 1 and 2 and attended meetings where he promised to redress the grievances of the public regarding irrigation, a subject which was included in his portfolio. Some preliminary constructions were started to prove the bona-fides of his promises but the work was left incomplete after the election was over. The whole thing was a device to exercise undue influence on the voters. Particulars are given in list K annexed to the petition.
  - (k) Sri Sant Shastri, Chairman of the District Board Sitapur, who was a worker of the respondents Nos. 1 and 2 promised to Ram Prasad and Bhola Ram that the District Board would compromise a case

which it had filed against those persons and the compromise would be beneficial to them provided they gave support to the respondents Nos. 1 and 2. He also promised to open Primary Schools in villages, to construct culverts and bridges and to give jobs to those who voted for the Congress candidates. Details are given in list Z of the petition.

2. Certain illegalities and corrupt practices were committed which materially affected the election. These were:—

- (a) Persons serving under the State Government actively helped the respondents Nos. 1 and 2 worked for them. These persons included Baiju chaukidar, Thakuri Yado, Chandra Narain Saksena, P. N. Misra, Ishur Din, Gargi Din, Har Nath chaprasi, Lachhman Singh, Ram Lakhan, Panchayat Inspector Mahmudabad Circle, Babu Ram Tripathi and the Medical Officer of Bansura. Six persons Chandrika Bux Singh, Rameshwar Prasad, Ram Dayal Vaidya, Devi Prasad Tewari, Brijraj Kishore, and Bagwant who were mukhias also acted as agents and workers of the respondents Nos. 1 and 2. Some of these persons e.g. Baiju Chaukidar and Thakuri pointsman were signatories to a notice published in connection with an election meeting that was to be held at Chandī Khara. The notice is annexed to the petition as Annexure 1. The particulars of what these Government servants did for the respondents Nos. 1 and 2 are given in lists, P, Q, R, S, T, U, V, and W annexed to the petition.
- (b) 50,000 tickets of one anna each were got printed by the respondent No. 1 for raising funds for election propaganda. These tickets were sold by District Board employees, Panchayat staff etc. and other Government servants and the money realised was utilised for the benefit of the respondent No. 1. Details are given in list V.
- (c) Canvassing was actually carried on within the restricted area at several polling stations by issuing parchis which contained the Congress party symbol and a direction that people should vote for the Congress candidates. This amounted to a breach of section 130 of the Representation of the People Act. The agents of the petitioners objected to this but no serious attention was paid to their objections.
- (d) At at least three polling stations Mahmudabad, Sair and Hirapur, the lists of voters supplied were incomplete and on that account a number of female voters had to go away without casting their votes. Objections in respect of this were made not only by the polling agents of the petitioners but at one place the polling agents of the respondents Nos. 1 and 2 also made that objection. Under Section 57 of the Representation of the People Act the presiding officers at those polling stations were bound to suspend the election but did not comply with those provisions. An objection in this respect was raised at the time of the counting of votes also and a repoll was demanded but the request was refused. Details are to be found in list X.
- (e) Conveyances were provided against the rules at several places for lady voters at Sadarpur, Kamlanur, Bari, Mahmudabad and Sidhauli. Details are to be found in list Y.
- (f) False returns of expenses were filed. Expenses were incurred in excess of the maximum allowed. Details are to be found in paragraph 31 of the petition. The respondents Nos. 1 and 2 employed more clerks than were allowed under the rules.
- (g) The respondents Nos. 1 and 2 for their own facility and convenience got several officials transferred from the constituency and brought in several officials who were sympathetic to them.

The petition is contested only by respondents Nos. 1 and 2. The other respondents have been served but have not put in appearance.

The contesting respondents deny the correctness of all the allegations on the basis of which the petitioners want their election to be declared void. They also deny the correctness of the particulars given in the various lists that are attached

to the petition. They say that the election was in every way fair and above-board, that no bribery or undue influence prevailed and that no illegalities or irregularities were committed which could materially affect the election. They further deny that any servant of the State Government worked for them or did any propaganda for them. In respect of most of the persons who are alleged by the petitioners to have been the workers or agents of the respondents Nos. 1 and 2 it is said that they were not their workers or agents at all.

The respondents also contended that the petitioners had not properly verified the petition and pointed out in particular that the various lists attached to the petition had not been verified at all. In respect of some of the allegations made they said that they were vague and lacked necessary particulars.

One of the main contentions put forward on behalf of the respondents was that as the petitioners had taken advantage of 60 days period of limitation and had prayed for the entire election to be declared void, it was necessary for them to bring their case within sub-section 1 of section 100 of the Representation of the People Act and they could not be allowed to prove any of the allegations which fell outside that sub-section and were covered by sub-section (2) of section 100. They urged in the alternative that if the petitioners wanted to bring their claim under sub-section (2) of section 100 also, the petition must be held to be barred by the 14 days rule of limitation.

Before the case came up for framing of issues Sri Jai Shankar Trivedi, counsel for the petitioners stated on 6th April 1956 as follows:—

"The relief which the petitioners have claimed has been claimed under section 84(c) of the Representation of the People Act and not under section 84(a) of the Act. They want the whole election to be declared void and not the election of the respondents Nos. 1 and 2 alone. The petitioners' case does not fall under clauses (b) and (c) of sub-section (1) of section 100 of the Representation of the People Act."

Sri Mahabir Prasad Srivastava, counsel for the contesting respondents then stated:—

"In view of the fact that the petitioners' counsel has stated that the petitioners claim relief under section 84(c) and not under section 84(a) of the Representation of the People Act the contesting respondents do not press the pleas raised in paragraphs 41 and 44 of their written statement."

The following issues were thereupon framed for trial:—

#### ISSUES

1. Is the petition defective as the date and place of verification have not been mentioned and the verification has not been made in accordance with law?
2. Is the petition defective as lists A to Z attached with the petition have not been separately verified?
3. Has the election of the respondents Nos. 1 and 2 not been a free election by reason that the corrupt practices and bribery and/or undue influence had extensively prevailed at the election in particular.
  - (a) Are the allegations made in paragraphs 14 and 16 of the petition correct? If so, do they amount to bribery and/or undue influence?
  - (b) Are the allegations made in sub-paragraphs (b), (c), (d) and (e) of paragraph 10 and paragraphs 12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 32, and 36 correct and do they amount to corrupt practices of undue influence?
  - (c) Do the allegations of bribery or undue influence made and established amount to an extensive prevalence at the election of these corrupt practices? If not, with what effect?
4. Do the allegations made in paragraphs 11, 19, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, and 35 amount to bribery or undue influence and is it necessary for the Tribunal to consider the correctness or otherwise of those allegations?
5. When the petitioners have confined their claim to clause (c) of section 84 of the Representation of the People Act, is it open to them to show that the respondents Nos. 1 and 2 were guilty of corrupt and illegal practices as contemplated by sub-section (2) of section 100 of the Act?

6. (a) If the answer to issue No. 5 is in the affirmative are the allegations made in paragraphs 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, and 35, correct and do they amount to corrupt practices?
- (b) Have these corrupt practices materially affected the result of the election? Is it necessary for this Tribunal to go into this question?
7. Is it open to the petitioners to bring their case within sub-section (b) of section 100 of the Representation of the People Act even though they have not filed their petition within the time provided by Rule 119(a) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951?
8. If corrupt practices were indulged in by the workers and agents of the respondents Nos. 1 and 2 as is alleged by the petitioners, did the respondent Nos. 1 and 2 instruct their workers and agents not to indulge in such corrupt practices and were those corrupt practices indulged in without the knowledge, consent or connivance of the respondents Nos. 1 and 2?
9. Are the petitioners entitled to have the election declared wholly void?

At the request of the respondent's counsel issues Nos. 1, 2, 4, 5 and 7 were first taken up as preliminary issues. So far as issues Nos. 1 and 2 were concerned it was conceded by the learned counsel for the petitioners that the defects pointed out by the respondents in the verification of the petition and its lists were there. The petitioners therefore sought the permission of this Tribunal to correct the defects and to verify the various lists in the proper manner. The Tribunal allowed them to do so and they corrected the verification of the petition and separately verified the various lists filed. After that was done issues Nos. 1 and 2 were not pressed.

After hearing the arguments of the learned counsel for the parties in respect of issues Nos. 4, 5 and 7 we thought it desirable that they should be considered along with the other issues in the case after the entire evidence of the parties had been recorded. The learned counsel for the petitioners stated at that stage that he would not produce any evidence in support of the allegations made in paragraphs 29, 31, 34, 35 of the petition. Against our order dated 28th July, 1956 that all the issues would be taken up together after the evidence of the parties had been recorded the respondents filed a writ petition in the Hon'ble High Court but that petition was rejected.

The parties then produced the evidence which they wanted to produce and their learned counsel addressed us in respect of the entire case.

We therefore proceed to record our findings on the issues other than issues Nos. 1 and 2.

#### FINDINGS

**Issues Nos. 5 and 7.**—Section 80 of the Representation of the People Act provides that no election shall be called in question except by an election petition presented in accordance with the provisions of this part (Part VI). Section 81 then lays down that an election petition calling in question any election may be presented on one or more of the grounds specified in sub-sections (1) and (2) of section 100 and section 101 to the Election Commission by any candidate at such election or any elector in such form and within such time but not earlier than the date of publication of the name or names of the returned candidate or candidates at such election under section 67, as may be prescribed. The time is prescribed in Rule 119 of the Rules framed under the Act, viz. the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 hereinafter to be called the Rules. Rule 119 of the Rules has two clauses. Clause (a) provides for a shorter period of limitation of 14 days while clause (b) provides for a longer period of limitation of 60 days. The starting point of the period of limitation is also different in respect of both the clauses. Section 83 of the Representation of the People Act provides what the contents of an election petition should be and section 84 provides for the reliefs that may be claimed by a petitioner in such an election petition. According to that section a petitioner may claim any one of the following declarations:—

- (a) that the election of the returned candidate is void.
- (b) that the election of the returned candidate is void and that he himself or any other candidate has been duly elected;
- (c) that the election is wholly void.

Section 97 of the Representation of the People Act provides for recrimination in cases where a declaration is claimed that the candidate other than returned candidate has been duly elected. Section 98 of the Act then lays down:

At the conclusion of the trial of an election petition the Tribunal shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of the returned candidate to be void; or
- (c) declaring the election of the returned candidate to be void and the petitioner or any other candidate to have been duly elected; or
- (d) declaring the election to be wholly void.

Section 100 of the Representation of the People Act contains the grounds on which an election is to be declared void. Sub-section (1) of the section which contains three clauses contains the grounds on which an election is to be declared wholly void. Sub-section (2) of the section on the other hand contains the grounds on which the election of the returned candidate is to be declared void on account of the commission of corrupt or illegal practices. Section 101 of the Representation of the People Act then lays down the grounds on which a candidate other than the returned candidate can be declared to be duly elected.

Now the bye-election in dispute was held in respect of a double-member constituency. The returned candidates were two in number. The present petition has admittedly not been filed within the shorter period of limitation of 14 days provided in clause (a) of Rule 119 of the Rules. The relief which the petitioners prayed for in their petition was that the election of respondents Nos. 1 and 2 be declared to be wholly void. The grounds put forward in the petition fell under sub-section (1) of section 100 of the Representation of the People Act as well as sub-section (2) of that section. As it was not clear under which clause of section 84 of the Representation of the People Act the relief claimed by the petitioners had been claimed, they were required to clarify the point and by his statement dated 6th April, 1956 their learned counsel made it clear that the relief which the petitioners had claimed had been claimed under section 84(c) of the Representation of the People Act and not under clause (a) of that section. There was no question of its being claimed under clause (b) because the petitioners had not claimed any declaration that they had been duly elected. The learned counsel for the petitioners made it further clear that what the petitioners wanted was that the whole election should be declared void and not the election of the respondents Nos. 1 and 2 alone.

In the above circumstances the contention put forward by the respondents in this:—

The Representation of the People Act makes a distinction between "the whole election being declared void" and "the election of a returned candidate or candidates being declared void". For the former relief the grounds which must be established are those enumerated in sub-section (1) of section 100. Sub-section (2) of section 100 becomes inapplicable to a case in which such a relief is claimed because that sub-section contains grounds only for the declaration of a returned candidate's election to be void. If therefore the relief is claimed under clause (c) of section 84 the grounds made out must be those mentioned in sub-section (1) of section 100 of the Representation of the People Act. A person claiming a relief under clause (c) of section 84 cannot rely on the grounds mentioned in sub-section (2) of section 100. If however a person claims a relief either under clause (a) or clause (b) of section 84, he must establish the grounds mentioned in sub-section (2) of section 100 and in that case sub-section (1) of that section will be inapplicable. In a case falling under clause (c) of section 84 where the grounds mentioned in sub-section (1) of section 100 are to be established the period of limitation is sixty days as provided in clause (b) of Rule 119 of the Rules. On the other hand for a case in which the relief (a) or (b) of section 84 is claimed and the grounds which are to be established for success are the grounds mentioned in sub-section (2) of section 100, the period of limitation is the shorter period of 14 days provided in clause (a) of Rule 119 of the Rules. The petitioners having expressly stated that they were claiming the relief mentioned in clause (c) of section 84 of the Representation of the People Act and having filed their petition within the longer period of limitation of 60 days could therefore succeed only if they established one of the grounds mentioned in sub-section (1) of section 100 of the Representation of the People Act. They could not be allowed to allege or prove any other grounds mentioned in sub-section (2) of section 100 because those grounds related to a relief claimed under clauses (a) or (b) of section 84 and not a relief claimed under clause (c) of that section.

If the petitioners wanted to establish any of the grounds mentioned in sub-section (2) of section 100 they ought to have claimed a relief mentioned in clauses (a) or (b) of section 84 and should have filed their application within 14 days period of limitation as provided in clause (a) of Rule 119. If therefore the petitioners were allowed the advantage of the longer period of limitation they should be confined to sub-section (1) of section 100 and can be allowed to succeed only if they establish the grounds mentioned in that sub-section. If they want to take advantage of any of the grounds mentioned in sub-section (2) of section 100, their petition must be thrown out because it has not been filed within the shorter period of limitation of 14 days.

The reply of the learned counsel for the petitioners to the above contention is that sections 84, 98 and 100 of the Representation of the People Act and Rule 119 of the Rules must be considered independently and separately and they are not inter-connected or inter-dependent. Each of them has been enacted for a distinct and separate purpose and one should not be interpreted with reference to the other. So far as the question of limitation is concerned Rule 119 is exhaustive and that question must be decided only with reference to that Rule. According to clause (a) of the Rule if there is only one returned candidate, the 14 days period of limitation is applicable. That clause will not apply to the case of the petitioners because in this case there are more than one candidate returned. For the petitioners therefore there was no question of filing their petition within the shorter period of limitation as there were two returned candidates. The clause of limitation which applied to their case was clause (b) of Rule 119, and the petition having been filed within 60 days must, according to that clause be held to be within limitation. The question of limitation according to the learned counsel has nothing to do with the relief claimed by the petitioners or with the grounds which they have to establish in order to get that relief. They are entirely different matters and are to be governed by the sections of the Act which have been enacted in respect of them.

In the present case the constituency was a double member constituency and both the respondents Nos. 1 and 2 had been declared duly elected. The petitioners wanted both of them to be unseated. If the election of both of them was declared void, the election would have to be declared wholly void. In the present case therefore there was no real distinction between the election to be declared wholly void and the election of the returned candidates being declared void. Both the reliefs were identical. In any case the relief that the election be declared wholly void was the wider relief and included in itself the declaration that the election of both the respondents Nos. 1 and 2 be declared void. The petitioners were therefore entitled to establish the grounds mentioned both in sub-section (1) of section 100 and in sub-section (2) of that section. The mere fact that they had claimed the relief mentioned in clause (c) of section 84 could not debar them from establishing the grounds mentioned in sub-section (2) of section 100. There was no justification for connecting sub-section (1) of section 100 with clause (c) of section 84 and sub-section (2) of section 100 with clauses (a) and (b) of section 84. The petition of the petitioners therefore being in respect of an election having more than one returned candidates could not be treated as time-barred because it had not been filed within the shorter period of limitation of 14 days; nor could the petitioners be prevented from establishing the grounds mentioned in sub-section (2) of section 100. If they established the grounds mentioned in sub-section (1) of section 100 they could get the whole election declared void and if they succeeded in establishing the grounds enumerated in sub-section (2) of section 100, they could get the election of both the respondents Nos. 1 and 2 declared void. The result in both the cases was to be the same, because in the present election in dispute there were only two returned candidates.

The question turns on the interpretation that is to be put on Rule No. 119 of the Rules and on the sections 84, 98 and 100 of the Representation of the People Act.

A brief reference to the decided cases on the point may prove helpful. The first case in which the question of limitation arose was the case of *Suryaji Rama Rao vs Bhika Trimbak Pawar* reported in 2 Election Law Reports 205. It was a case relating to a three members constituency in which the election petition had been filed within the longer period of limitation. The prayers made here in the alternative. The first declaration sought was that the whole election be declared void. In the alternative it was prayed that the election of respondent No. 1 be declared void. The ground on which the election of the particular respondent was sought to be set aside was that he had been improperly nominated.



It was urged that the ground taken fell within clause (c) of sub-section (2) of section 100 and for challenging the election of a particular returned candidate on that ground the election petition should have been filed within 14 days. The contention was not accepted and it was held that the clause of rule 119 which was applicable was clause (b) not only because there were more than one returned candidate but also because the ground on which the election of respondent No. 1 was sought to be declared void fell not under sub-section (2) but under sub-section (1) of section 100. The petition was therefore held to be within time.

In the case of *Jawahar Shanker Pacholi vs. Hirdaya Narain Singh and others* reported in 3 Election Law Reports 397, the constituency was a multi-membered one. Three candidates who were implicated as respondents Nos. 1 to 3 had been duly elected. The petitioner wanted their election to be declared void and also claimed a declaration that he himself had been duly elected. It was contended that as the petitioner had not claimed that the whole election be declared void but had only prayed that the election of the returned candidates be declared void, he should have filed the petition within the shorter period of limitation provided by clause (a) of rule 119 of the Rules. This contention was not accepted and it was held that clause (a) of rule 119 applied only where there was only one returned candidate while clause (b) applied where there were more than one returned candidates. The words used in clause (b) are:—

“In case where there are more returned candidates than one at an election and the election petition calls in question the election as a whole.”

It was held that the word ‘and’ used in this clause had been used in a disjunctive sense meaning ‘or’ and not in a conjunctive sense. Clause (b) of the rule would therefore be applicable in two cases:—

1. where there were more than one returned candidates or
2. where the election was challenged as a whole.

In all other cases clause (a) was applicable.

In *Jwala Prasad Misra vs Mahadeo and others*, 3 Election Law Reports 473, the constituency was a double member one. There was one general seat and one reserved seat. The petitioner had claimed three alternative reliefs:—

1. that the election of the respondent No. 1 was void; and that the petitioner who secured the next highest number of votes for the general seat had been duly elected;
2. that the election of both the candidates was wholly void;
3. that the election of respondent No. 1 was void.

The petition had been filed availing the shorter period of limitation. It was contended that so far as the 1st and third reliefs were concerned they could be claimed only if the petition had been filed within the shorter period of limitation. It was only in respect of the second relief that the longer period of limitation could be availed of. It was held that there was nothing in the Act to prevent a petitioner from claiming alternative reliefs and one or more of the reliefs mentioned in section 84 of the Representation of the People Act could be claimed simultaneously or in the alternative in the same petition. It was further held that even though the constituency was a multi-membered one and more than one candidate had been returned, so far as reliefs 1 and 3 were concerned they could be claimed only if the petition had been filed within the shorter period of limitation. Only relief No. 2 could be claimed if the petition had been filed within the longer period of limitation. In that particular case however it was held that the petitioner was not entitled to reliefs 1 and 2. He could claim only relief No. 3. The case was therefore governed by clause (a) of rule 119 and the petition having been filed within the shorter period of limitation was within time.

In the case of *Rattan Singh vs Divinder Singh and others*, Election Law Reports 234, the constituency was a double member one there being one general seat and one reserved seat. The petitioner had claimed two reliefs:—

- (a) that the election of the returned candidates was void, and
- (b) that the election was wholly void.

Two contentions were raised. The first was that it was not open to the petitioner to claim two reliefs. He could claim only one of the reliefs mentioned in section 84 of the Representation of the People Act. The second was that for the first relief he had claimed the limitation was the shorter one provided by clause (a) of Rule 119 while the limitation for the second relief was the longer one provided

by clause (b) of that rule. Both these contentions were overruled. In respect of the first it was laid down that the petitioner could claim one or more of the three reliefs mentioned in section 84 in the same petition. In respect of the second contention it was laid down that in a case where there were only two returned candidates and the election of both was being challenged and at the same time it was claimed that the election was wholly void, the clause of rule 119 which was applicable was clause (b). It was not correct that the relief claiming the election of both the returned candidates as void was governed by rule 119(a) and the relief that the entire election be declared void was governed by rule 119(b). Stress was laid on the point that the petitioner would be said to be challenging the election as a whole either when he sought a declaration for the election to be wholly void or when he prayed for declaring the election of all the candidates returned at that election from the constituency in question to be void. The result of both the reliefs being the same the clause of rule 119 that was applicable was clause (b).

In the case of *Maharaj Singh vs Ratan Amol Singh and others*, reported in 7 Election Law Reports 320, the constituency was a double member one and there were two returned candidates. The relief claimed was that the election be declared wholly void but the petitioner sought to prove against one of the returned candidates that he had committed corrupt practices mentioned in sub-section (2) of section 100. The majority of the members of the Tribunal who were dealing with the election petition then laid down:—

"The grounds mentioned in sub-section (1) of section 100 of the Representation of the People Act, 1951, are grounds for declaring an election to be wholly void, and the grounds mentioned in sub-section (2) of section 100 are grounds for declaring the election of the returned candidate void. Consequently, if a petitioner claims only a declaration that the election is wholly void, he cannot ask for an inquiry into grounds which are not covered by sub-section (1) but by sub-section (2) only. Further, as the period of limitation prescribed by rule 119 for these two kinds of reliefs is different, grounds alleged in an election petition which are covered by sub-section (2), alone and do not come within sub-section (1) cannot be inquired into if the petition has not been filed within the time prescribed by rule 119(a) for claiming a declaration that the election of the returned candidate is void."

The third Judge took a contrary view and held as follows:—

"The grounds mentioned in sub-sections (1) and (2) of section 100 are not mutually exclusive, and if in a petition the election is attacked as a whole and such petition is within time under rule 119(b), then the grounds of attack mentioned in sub-section (2) of section 100 can also be urged, and the relief of setting aside the returned candidate being a lesser relief, can be granted by the Tribunal if on the evidence brought on the record the grounds mentioned in sub-section (1) are not proved but those mentioned in sub-section (2) are proved."

In *Gaya Prasad vs Krishna Chandra Sharma and others*, reported in 10 Election Law Reports 6, there was a double member constituency from which two of the respondents had been declared elected. The election of both the returned candidates was called in question and it was prayed that the whole election be declared void. It was held that the case was governed for the purposes of limitation by clause (b) of rule 119 and not by clause (a) of that rule.

In *Dr. Brijendra Swarup vs Election Tribunal, Lucknow* reported in 10 Election Law Reports 191, the constituency was a multi-membered one and three candidates had been returned. In the election petition it was prayed that the election be declared wholly void, but the grounds urged included grounds mentioned in sub-section (1) as well as sub-section (2) of section 100. The petition had been filed beyond the shorter period of limitation but well within the longer one. Though the relief claimed in the petition was for the entire election to be declared void, some of the grounds taken *viz.* grounds Nos. 10, 11, 12, 13, 14 and 19 to 28 fell under sub-section 2 of section 100 and not under sub-section (1) of that section. An objection was therefore raised by one of the respondents who was a returned candidate that the only relief claimed being one under clause (c) of section 84, it was not open to the petitioner to establish any of the grounds which fell not under sub-section (1) but under sub-section (2) of section 100. It was also contended on behalf of the returned candidate that the petition having been filed within the longer period of limitation and not within the shorter one, the petitioner

could not be allowed to base his claim on any grounds which did not fall within sub-section (1) of section 100 and fell within sub-section (2) of that section. Both the objections were rejected and the Tribunal took the view:—

- (1) that the reliefs mentioned in section 84 of the Act could be claimed in the alternative and even if no relief was claimed the petition could not be rejected and the Tribunal could grant such relief as in its view was justified in the circumstances.
- (2) that so far as limitation was concerned, if there was a single returned candidate, the shorter period of limitation would apply whatever may be the relief claimed and the longer period of limitation would apply where more than one candidate had been returned.
- (3) that even though the declaration claimed was that the whole election be declared void, the Tribunal was not confined to the relief claimed. It could grant a different relief and declare the election of one of the candidates to be void. Similarly if the relief claimed was that the election of a returned candidate be declared void, the Tribunal could declare the whole election to be void.
- (4) that the Tribunal could therefore go into the grounds which fell under sub-section (2) of section 100 even though the relief claimed was for the entire election to be declared void and not for the election of a returned candidate or candidates only to be declared void.

A writ petition was filed against the decision of the Tribunal in the Hon'ble High Court and was decided by a Bench consisting of Malik C. J. and Bhargava J. The counsel for the opposite parties conceded their inability to support any of the findings of the Tribunal on the questions of law. The learned Judges thereupon held that the view of law taken by the Tribunal was entirely erroneous and laid down:—

- (1) that the petitioner could claim only one of the reliefs mentioned in section 84. It was not open to any one to claim more than one relief even in the alternative. The three reliefs were distinct and separate and the grounds on which they were to be granted were also different.
- (2) that it was not open to the Tribunal to grant any relief other than the relief which had been prayed for. Where, therefore, the prayer in the petition was to declare the election of a returned candidate void, the Tribunal could not declare the whole election to be void and where the prayer was that the election be declared wholly void, the Tribunal could not refuse to grant that relief and declare the election of one returned candidate to be void.
- (3) The shorter period of 14 days limitation applied if reliefs (a) and (b) of section 84 were claimed. The longer period could be availed of only if the relief claimed was that mentioned in clause (c) of section 84.

In *A. Srinivasan vs. G. Vasantha Pal and others*, reported in 10 Election Law Reports 245, a bye-election had been held for two seats in the Madras Legislative Council from the Graduates' Constituency. There were four candidates who contested the election. Two of them were duly declared elected. The candidate who had received the smallest number of votes then filed an election petition in which he claimed two alternative reliefs. The first was that the election of the two returned candidates was void and the second was that the election was wholly void. It was held that it was open to the petitioner to claim any of the reliefs mentioned in section 84 in the alternative and it was for the Tribunal to decide to which reliefs the petitioner was entitled and to grant him that relief. It was further held that clause (a) of rule 119 of the Rules applied only to those cases where the election of a single candidate was called in question, whatever the relief sought by the petitioner may be. If the petitioner called in question the election of more than one returned candidate sub-rule (a) could not apply. As in that case there were only two returned candidates and the relief claimed was that either the whole election be declared void or that the election of both the returned candidates be declared void, the case was governed not by clause (a) of rule 119 but by clause (b) of that rule. That was the decision of a single Judge. Subsequently the matter went up in appeal before a Division Bench and the Judgment of the Division Bench is reported in *Dr. V. K. John vs G. Vasantha Pal and others*, 10 Election Law Reports 345. The decision of the single Judge was affirmed in respect of the view that the reliefs mentioned in section 84 could be

claimed in the alternative. The decision of the single Judge on the question of limitation was however reversed and it was held that if there was only one returned candidate clause (a) would apply whether the relief prayed for was that his election should be set aside or the election should be set aside as a whole because the result came to the same thing though the grounds might be different. Where, however, the returned candidates were more than one the election petition may pray for a declaration that the election of one of them be declared void. Even then clause (a) would apply. It would equally apply when the election of more than one returned candidate is impugned individually. In such a case though the election petition may comprise reliefs directed against several candidates, for the purposes of limitation such petition shall be deemed to comprise several petitions each directed against one of the candidates returned and time must be calculated under clause (a) with reference to each of them. Clause (b) of rule 119 would apply only to a case where there are more returned candidates than one and the election petition prays that the election be declared to be wholly void. The word "calls in question the election as a whole" in clause (b) must be construed with reference to section 84 (c) and section 100 (1) i.e. to say with reference to the prayer for a declaration that the election is wholly void. It was further held that as in the particular case two reliefs had been claimed first that the election be declared wholly void and secondly that the election of the two returned candidates be declared void, the two prayers were to be governed by the two different clauses of rule 119, the first by clause (b) and the second by clause (a).

The above resume of the decided cases on the point makes four things quite clear. They are:—

1. that there is a conflict of opinion on the question whether a petitioner can claim only one of the reliefs mentioned in section 84 or whether he can claim more than one reliefs either together or in the alternative. The view of the Allahabad High Court as propounded in the case of *Brijendra Swarup vs. Election Tribunal Lucknow and others* reported in 10 Election Law Reports 191 is however definite that a petitioner can claim only one of the three reliefs mentioned in sec. 84 and cannot claim more than one relief even in the alternative.
2. that in a case where there are more returned candidates than one and the election is sought to be declared wholly void, the case is governed by clause (b) of rule 119 of the Rules.
3. that the authorities also differ on the question whether clause (a) or (b) of rule 119 will apply if the number of returned candidates exceeds one but the election of the returned candidate alone is sought to be declared void and not the entire election.
4. There is difference of opinion also on the question whether the petitioner who claims the election to be declared void as a whole can be allowed to establish the grounds mentioned in sub-section (2) of S. 100. In some cases the view has been taken that in a case where only two candidates have been returned and the petitioner wants the election of both to be declared void and also wants the election to be declared void as a whole, he can be allowed to establish the grounds mentioned in both sub-sections of section 100. Such a case is *Ratan Singh vs Devinder Singh and others*, 7 Election Law Reports 234. In other cases it has been held that if the relief is claimed under clause (c) of sec. 84, the grounds that can be established can only be those mentioned in sub-section (1) of section 100 and in case the relief claimed is that mentioned in clause (a) or (b) of section 84, the grounds that can be established are those mentioned in sub-section (2) of section 100 (*vide* the majority view in *Maharaj Singh vs. Ratan Amol Singh and others* 7 Election Law Reports 320 and *Brijendra Swarup vs. Election Tribunal Lucknow*, 10 Election Law Reports 191).

The controversy about the petitioners' right to claim more than one of the reliefs mentioned in section 84 of the Representation of the People Act has however become immaterial for the purposes of the case in hand on account of the clear statement of the petitioners' counsel made on 6th April, 1956 that the petitioners were in this case claiming relief under clause (c) of section 84 only and not under any of the other two clauses. In this case therefore there is no question of more than one relief being claimed together or in the alternative.

On the question of limitation the opinion does appear to be divided and the reason appears to be that the two clauses of Rule 119 are very unhappily worded. Whatever interpretation may be put on them some difficulty is bound

to arise. Rule 119 being the only provision enacted to provide limitation for election petitions one would have expected it to be exhaustive so as to cover every possible election petition. It could not have been the intention of the legislature to prescribe the period of limitation for some petitions and not for others. The rule has however been so worded, that if it is strictly interpreted it will not be difficult to conceive of cases which do not fall at all within its purview. Differences in its interpretation have arisen because of attempts to bring every possible case within one or the other of its two clauses. In the present case however it does not appear to us to be necessary to take sides in this controversy. It appears to be the unanimous opinion of every one that in a case where there are more than one returned candidate and the election is sought to be declared as a whole the clause of rule 119 that is applicable in clause (b). Both these essential conditions are fulfilled in the present case. Here we have two returned candidates and as has been expressly stated by the learned counsel for the petitioners the prayer is one made in accordance with clause (c) of section 84 i.e. the election is being challenged as a whole. Both the conditions of clause (b) of rule 119 are therefore present and so far as the present petition is concerned there can be no doubt that it is governed by the longer period of limitation. This view is also in accord with the decision of the Allahabad High Court reported in Dr. Brijendra Swarup vs. Election Tribunal Lucknow, 10 Election Law Reports 191. It was clearly laid down there:

"The period of 10 days prescribed in rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, applies to a petition in which the relief mentioned in section 84(a) or 84(b) is claimed while the period of 60 days applies when the relief under section 84(c) is claimed."

The relief under section 84(c) alone being claimed in this case the period of 60 days is applicable and the petition must therefore be held to be within time. In this view of the case it is not necessary for us to go into the question as to which of the two clauses of rule 119 will be applicable in other cases.

A perusal of sections 84, 97, 98 and 100 of the Representation of the People Act makes it clear beyond doubt that in enacting these provisions the legislature contemplated a clear distinction between 'the whole election being declared void' and 'the election of one or more returned candidates being declared void'. This distinction is made in sections 84, 98 as well as in section 100. If the election of one or more returned candidates alone is being questioned the relief has to be claimed under clause (a) or (b) of section 84, the grounds that have to be established are those mentioned in sub-section (2) of section 100 and the reliefs that can be granted will be one of the reliefs mentioned in sub-section (b) & (c) of section 98. If on the contrary the entire election is being questioned, the relief must be claimed under clause (c) of section 84. The grounds that are to be established are those enumerated in sub-section (1) of section 100 and the relief that can be granted is the one provided in clause (d) of section 98. In some cases particularly where there is a single returned candidate or if there are more candidates returned than one and the election of every one is questioned the result of claiming the relief under clause (a) of section 84 or under clause (c) of that section may be the same; but on that account it does not appear to be possible to ignore the distinction between the two kinds of relief. The distinction appears to be real and not a formal or imaginary one. The distinction lies in the scope of the two reliefs. The scope of a petition in which relief (c) of section 84 is claimed is naturally wider than the scope of the petition in which the relief is claimed under clause (a) or (b) of section 84. As was pointed out in Dr. Brijendra Swarup's case if the election of a particular returned candidate is questioned under section 84, the other candidates though they may be parties to the proceedings may not be interested. If however the entire election is being challenged each returned candidate would be vitally interested in the proceedings. The facts to be established in such a case would also cover a wider and more extensive field and it may be possible to win such petition without establishing correct practices or irregularities which will have to be proved in case the election of a particular candidate only is sought to be declared void. It therefore appears to us that if a person seeks the wider relief and claims a declaration under clause (c) of section 84 he must be confined to the grounds mentioned in sub-section (1) of section 100 and cannot be allowed to avail himself of the grounds which find a mention in the second sub-section of that section. If we may say so with respect the majority view taken in the case of Maharaj Singh vs. Ratan Amol Singh and others 7 Election Law Reports 320 appears to us to be more appealing and reasonable. It is also in accordance with the view taken in Dr. Brijendra Swarup's case by our own High Court reported in 10 Election Law Reports 191.

It was urged that the decision in Dr. Brijendra Swarup's case was not a decision of the Court because the points urged on behalf of the petitioner in the Hon'ble High Court were conceded by the learned counsel for the opposite parties. A proposition of law laid down by the Hon'ble Judges cannot however be said to lose any part of its value simply because its correctness was conceded by both the parties in the case. It is true that the learned counsel for the opposite parties had expressed in that case their inability to support any of the findings on questions of law recorded by the Tribunal but the law which was declared by the Hon'ble Judges was the law which in their opinion was the correct law. They expressly noted that the reasons on which the conclusion of the Tribunal had been based did not appeal to them and they went on to express their own considered views on the point. They sent back the case to the Tribunal to follow the observations made by them in their judgment. We are therefore not prepared to agree with the contention that the binding force of this decision loses any part of its strength simply because the view taken was the agreed view not only of the Judges but of both the parties concerned. The case is in our opinion an authority not only on the question of limitation but also for two other propositions. The first is that in a case where the whole election is sought to be declared void the petitioner must be confined to the grounds mentioned in sub-section (1) of section 100 while the grounds mentioned in sub-section (2) of that section are relevant only if the election of a particular candidate is sought to be avoided. The second is that if the relief claimed is under clause (c) of section 84, it is not open to the Tribunal to grant a relief mentioned in any of the other provisions of that section and if the relief claimed is one under clause (a) or (b) it is not open to the Tribunal to declare the entire election void.

In the present case the petitioners having expressly stated that they claimed the relief only under clause (c) of section 84, we think they can succeed only if they establish the grounds contemplated by sub-section (1) of section 100 and it is not open to them to take any advantage of any other grounds which do not find a mention in that sub-section but are enumerated in sub-section (2) of that section.

Our answer to both these issues Nos. 5 and 7 is therefore in the negative.

**Issue No. 6(a).**—We have answered issue No. 5 in the negative and have held that as the petitioners have claimed only the relief mentioned in clause (c) of section 84, it is not open to them to prove that any corrupt practices contemplated by sub-section (2) of section 100 were committed by the respondents No. 1 and 2 or that the election of those respondents is liable to be declared void on account of those practices. It is therefore not necessary for us to consider the correctness or otherwise of the allegations made in paras. 24 to 31 and 33 to 35 of the petition. The petitioners however insisted that we should record our definite findings in respect of the allegations made in all these paras. In view of the observations made by their Lordships of the Supreme Court in the case of *Raj Krushna Bose Vs Binod Kanungo and others* reported in 9 Election Law Reports 294, we feel that as we form an *ad hoc* body and this Tribunal will cease to exist as soon as our judgment in the election petition is given, it is desirable that we record our findings on these questions of fact. We have therefore acceded to the request of the learned counsel for the petitioners and proceed to consider the allegations made in those paragraphs.

**Para. 24.**—It is said that a notice which is filed as annexure 1 to the petition was issued under the signatures of 22 persons inviting the public to a meeting that was to be held on 4th February 1955 at a place called Chandi Khara which is said to be a hamlet of village Gwalamau. The signatories included Baiju Ram chaukidar and Thakuri Yado, a pointsman of the North-Eastern Railway posted at Kamlapur railway crossing. The former was a person serving under the State of U.P. and the latter was a person serving under the Union of India. The meeting actually took place at Chandi Khara and was addressed by the respondents Nos. 1 and 2. As these two persons *viz.* Baiju Ram and Thakuri serving under the Government had signed the notice calling the meeting, they committed a corrupt practice mentioned in clause (8) of section 123 of the Representation of the People Act.

The answer of the respondents to the allegations made in para 24 of the petition is a complete denial. Their case is that no meeting ever took place at Chandi Khara, that none of the persons mentioned in annexure 1 issued any notice inviting the public to that place, that there was no question of the respondents addressing the meeting and that annexure 1 was a fraud perpetrated by the petitioners and their workers for the purposes of the present election petition.

Both the petitioners varied the allegations made in para. 24 on the basis of personal knowledge. When they entered the witness box they said nothing on the point. It follows that they had no personal knowledge about the allegations. The original notice of which annexure 1 purports to be a printed copy was never called or produced before us. No one belonging to the press in which it is alleged to have been published was produced. There is also no evidence to show that any press of the name of Rama Press Sitapur actually exists and if it exists that any pamphlet of the kind of annexure 1 was published in that press. There is therefore no evidence on the basis on which it can be held that Baiju Ram or Thakuri Yado or any of the other 20 persons whose names are printed in annexure 1 actually signed its original. Out of the alleged signatories Baiju Ram (P.W. 32), Chhuranju Lal (P.W. 27), Jurakhan Lal (P.W. 13), Makhani Ram (P.W. 11), Thakuri Yado (P.W. 33) and Parbhu Ram (P.W. 23) have been examined and all of them have definitely denied that they signed or published any notice of this kind. The respondent No. 1 has also entered the witness box and has denied that any meeting was held at Chandi Khara or that he addressed it. Bhikari (D.W. 24), a resident of Chandi Khara has also been examined on behalf of the respondents and denies that any meeting was held there on 4th February 1955 or on any other date.

The petitioners themselves have not examined any person belonging to Chandi Khara who could state that a meeting was actually held there on 4-2-1955, or that it was addressed by the respondents nos. 1 and 2. They have examined only four witnesses on the point. They are Bechu (P.W. 1), Kallu (P.W. 2), Hinga Lal (P.W. 3) and Sukhdeo Prasad (P.W. 19). None of these witnesses can however be considered to be reliable. Bechu (P.W. 1) is a member of the petitioners' party. He is illiterate. He says that the parchas which were distributed in respect of the meeting contained the picture of a pair of bullocks with a yoke. In annexure 1 however there is no such picture. Only two flags are printed on it. From this it follows that he could not have seen the parchas like annexure 1 being distributed. He had admittedly a dispute with Baiju chaudiar about a khalian and was thus interested in alleging that Baiju being a Government servant committed a corrupt practice. According to Kallu (P.W. 2) the meeting at Chandi Khara was held two months before the polling day. The polling was held on 27-2-1955 and the meeting mentioned in annexure 1 was called for 4-2-1955. The meeting to which the witness refers could not be the meeting for which this leaflet was distributed. He too is a member of the P. S. P. Hinga Lal (P.W. 3) said at first that he had voted for the respondent no. 1 because of a threat given to him. He had however to admit in cross-examination that he was not a voter at all. Therefore there was no question of his having voted under threat. According to him the parchas distributed on behalf of the Congress had no figure or picture on them. In annexure 1 however there is a picture of two flags. The parchas he referred to could not therefore be of the kind of annexure 1. The fourth witness is Sukhdeo Prasad (P.W. 19). He does say that a meeting was held at Chandi Khara which he attended but does not give its date. He admits that he did not receive any notice about the meeting. He says that he got a parcha but cannot say what it contained. In our opinion therefore the allegations made in para 24 of the petition are not satisfactorily proved and it is not possible to hold that Baiju Chaudikar or Thakuri Yado pointsman actually signed the original of annexure 1 or that any notice of the kind was published on behalf of the respondents.

Para 25.—This para contains 12 sub-paragraphs each relating to a particular Government servant. The respondents denied the allegations made in all these sub-paragraphs together with their connected lists.

In respect of the persons mentioned in sub-paragraphs 3, 5, 7, 8, 9, 10, 11 and 12 and the lists O, Q, R, S, T, and U no evidence has been led on behalf of the petitioners. The allegations made in those sub-paragraphs relating to the persons mentioned in them cannot therefore be said to have been substantiated.

The sub-paragraphs that remain are 1, 2, 4, and 6.

Sub-para 1 relates to Baiju chaudiar. He is a resident of Gwala Mau and is alleged to have done propaganda for the respondents and distributed notices announcing the Congress meeting to be held at Chandi Khara on 4-2-1955. He is also said to be a signatory of the leaflet (annexure 1). We have already shown

while discussing the allegations made in para 24 that the case that Baiju chaulkidar distributed notices in respect of the meeting to be held at Chandi Khara on 4.2.1955 or that he was a signatory to the original of the leaflet (annexure 1) is not established. The only thing that remains to be seen is whether Baiju chaulkidar actually did any propaganda for the Congress candidates. It is mentioned in list that besides Chandikhara he did propaganda in 8 villages Lalwa, Gwalamau, Kharwalia, Nasirpur, Garhi, Khurda, Kursanda and Panch Pir. The propaganda was done between 31.1.1955 and 4.2.1955. No evidence worth the name has been produced about his doing any propaganda in village Kharwalia, Nasirpur, Garhi, Kursanda and Panch Pir. In fact some witnesses of those villages have been examined by the petitioners but say nothing about any propaganda done by Baiju chaulkidar in their villages; for instance Kandhai (P.W. 7) has been examined but says nothing about Baiju Chaulkidar having done any propaganda in his village. Two witnesses (P.W. 17) Sudhakar Nath of Kursanda and (P.W. 19) Sukhdeo Prasad of Kursanda say nothing about anything done by Baiju chaulkidar in their village. In respect of village Khurda two witnesses were examined. They were (P.W. 4) Dina Lal and (P.W. 5) Ram Autar. P.W. 4 did not name Baiju chaulkidar having worked for the respondents in his village though he has mentioned several other workers of those respondents. This creates a doubt also in respect of the evidence of P.W. 5 Ram Autar, the other witness belonging to this village. Both these persons belong to the petitioners' party and are not independent though Ram Autar had the audacity of denying this at first. In respect of Gwalamau three witnesses Bechu (P.W. 1), Kallu (P.W. 2) and Hinga Lal (P.W. 3) have been examined. We have already shown in connection with their evidence about the distribution of the parchas like annexure 1 that they are not reliable witnesses. Otherwise too these witnesses cannot be considered to be such as can be relied upon with confidence. Two witnesses Tribhuwan (P.W. 11) and Sheo Dayal (P.W. 12) were examined in respect of village Lalwa. The former said nothing about Baiju chaulkidar doing any work in his village. He however admits that he did not know Baiju from before and two persons Kallu and Mahatma pointed out a person to him as Baiju. One therefore cannot be sure whether the person whom this witness considered to be Baiju was really Baiju chaulkidar. It is therefore not proved to our satisfaction that Baiju chaulkidar actually worked or did any propaganda for the respondents. Baiju has been examined as D.W. 32 and has definitely denied that he did any work for the respondents. Two other witnesses of Gwalamau Parbhu (D.W. 23) and Chiranju Lal (D.W. 27) were examined and they also denied that Baiju chaulkidar of their village did any work for the Congress candidates. D.W. 24 Bhikari of Chandi Khara also denied that Baiju Chaulkidar came to his village to ask for votes. Ram Lal (D.W. 22) who claims to have been one of the workers of the respondents in Gwalamau and neighbouring villages also denies that Baiju was his co-worker.

Sub-para 2 of para 25 relates to Thakuri, a pointsman in the North-Eastern Railway. According to list which relates to him, he worked for the respondent in Gwalamau, Maholi, Kamalpur, Kharwalia, Kursanda, Kasmanda and Chandi Khara between the 31st January 1955 and 3.2.1955. There is no evidence about Thakuri having done any work in villages Maholi, Kamalpur, Kharwalia, Kursanda. On the contrary Gopal Singh of Maholi (P.W. 16) Sudhakar Nath of Kursanda (P.W. 17), Sukhdeo Prasad (P.W. 19) of Kursanda, Sheo Din (P.W. 13) of Kamalpur, Sripal Singh (P.W. 14) of Kamalpur, Murlu Singh (P.W. 15) of Kamalpur and Ram Jiwan (P.W. 20) do not say that Thakuri did any work for the respondents in their villages. The only witnesses who depose about Thakuri having done any propaganda for the respondents are Bechu (P.W. 1), Kallu (P.W. 2), Hinga Lal (P.W. 3), Dina Lal (P.W. 4), Ram Autar (P.W. 5) Dore (P.W. 6) and Triphuan (P.W. 11). The petitioner no. 1 verified sub-para 2 of para 25 on the basis of personal knowledge but said nothing about any work of Thakuri in his own deposition. We have already said that Bechu (P.W. 1), Kallu (P.W. 2), Hinga Lal (P.W. 3) and Ram Autar (P.W. 5) are not reliable witnesses. Dina Lal (P.W. 4) admitted in cross-examination that Thakuri did not work for the Congress and that he only saw him in a meeting. Dore (P.W. 6) admitted that he never mentioned to anyone about Thakuri having worked for the Congress. According to Ram Autar Thakuri worked in Khurda also. That village however does not find a mention in list N. Tribhuwan (P.W. 11) appeared to be so enthusiastic in supporting the petitioners' case that he said several things about the respondents' workers which were not stated by the other witnesses. How far he is reliable can be inferred from the fact that he denied that his own brother Gajodhar ever worked as a chaprasi in the Tehsil though Sheo Dayal (P.W. 12) definitely admitted that Gajodhar was formerly a chaprasi in the Tehsil. None of these witnesses can therefore be considered to be reliable. Thakuri as (D.W. 33) has entered the witness box and has denied that he did any work for the Congress or the res-



pondents. It is strange that according to list N Thakuri is not alleged to have worked for the respondents in his own village though he went out of his way to work for them in other villages. In respect of Thakuri also therefore it cannot be said to have been satisfactorily proved that he did any work for the respondents.

Sub-para 4 of para 25 deals with Pratap Narain Misra quirk amin. It is alleged in respect of him that he did Congress propaganda and addressed an election meeting at Launa on 7.2.1955. On 22.2.1955 he accompanied Shri Banarsi Das, Deputy Minister from Launa to Jairampur. List Prelates to him but in that list only certain dates and villages are mentioned. It is not said as to what was done on those dates in those villages. In sub-para 4 of para 25 also it is not mentioned clearly and specifically that P. N. Misra did any propaganda in the villages mentioned in list P. P. W. 27. Prahlad Singh has been examined to prove that Pratap Narain Misra addressed a meeting at Launa. The witness however admits that though Pratap Narain Misra was in Government service he never complained to any one, not even to the superior officers of Pratap Narain Misra, that he (Pratap Narain Misra) was doing work for the Congress. Pratap Narain Misra (D.W. 31) has himself entered the witness box and has denied that he did any work for the Congress at any time. Prakash Chandra Seth (D.W. 30) who is the Wasil-Baqi-Nawis of Sidhauli Tehsil, brought certain papers from the Tehsil and on their basis Pratap Narain Misra stated that on 7.2.1955 he had gone to the Tehsil to deposit his week's collections. Sidhauli is 15 miles away from Launa and as Pratap Narain Misra has stated it takes one full day for anyone to make a deposit in the Tehsil. On 22.2.1955 when he is alleged to have gone to Jairampur, the register brought by Prakash Chandra Seth showed that he was at Katra Churipur. The case that he addressed a meeting at Launa on 7.2.1955 or that he went with Sri Banarsi Das Deputy Minister on 22.2.1955 thus sounds highly improbable and cannot be accepted as established. The case that Pratap Narain Misra went with Sri Banarsi Das to Jairampur becomes improbable on this ground also that in list I which relates to places where Sri Banarsi Das Deputy Minister went, Jairampur does not find any mention. No witness of Launa or Jairampur has been examined to state that Pratap Narain Misra did any work for the Congress candidates in those villages.

Sub-para 6 of para 25 relates to Gargi Din. He is said to be a District Board teacher who was an agent and a very active worker of the Congress. It is alleged in respect of him that he intimidated the students of the junior High School Kamlapur whose parents were the supporters of the petitioners and ordered them not to work for the petitioners. He snatched away the caps and flags of P.S.P. from the boys and others who were supporting that party. In connection with him some dates and villages are mentioned in list Q-1 but it is not mentioned as to what was done by Gargi Din. No evidence has been produced that he did anything for the respondents in the villages mentioned in Q-1. Only two witnesses P.W. 13 Sheo Din and P.W. 14 Sripal Singh have been examined in this connection. The former says that Gargi Din was a worker of the Congress in his village and he was among the persons who threatened to put him in jail and his cattle in the pound, if he did not set up the Congress Flag. They also took down the flag of a dhobi. He did not specify what kind of flag it was. It is significant that none of those allegations find a place in the petition. Sripal Singh (P.W. 14) states that his son was a student in the School where Gargi Din was a teacher and that one day his son went to the School with a red cap on but came back without it. He also added that Gargi Din told his son that he (the witness) should vote for the Congress and if that was not done, the son's name would be struck off from the School register and his freeship would be withdrawn. None of these allegations are specifically made in sub-para 6 of para 25. The names of Sripal Singh or his son are conspicuous by their absence in that para. The cap of Sripal Singh was not taken off in his presence and he could not be sure as to what had become of it. Sripal Singh can also not state from personal knowledge whether what his son told him about Gargi Din's threat was correct or not. The evidence in respect of this sub-para is thus entirely vague and unsatisfactory. Gargi Din has been examined. He is D.W. 37. He denies the allegations made against him. It is also worth noting in this connection that Gargi Din being a teacher of the District Board School cannot be considered to be a person serving under the Government.

Now of the allegations made in the various sub-paras of para 25 can therefore be held to have been satisfactorily proved. In fact the case that persons serving under the State or Union so openly worked for the respondents appears to be inherently improbable particularly in view of the fact that in this constituency several election petitions in all of which the respondent no. 1 was a party had been fought before the bye-election in dispute and the respondents

must have been quite aware that if any Government officials assisted them in their election, it would be enough to vitiate the election.

**Para 26.**—No evidence has been produced to prove the allegations made in this para that 50,000 tickets each of the face value of anna one were got printed by the respondent No. 1 for raising funds for the election propaganda or that any of the persons mentioned in list V sold the tickets or realised any money.

**Para 27.**—In this para it is alleged that six persons who were mukhias, i.e. Chandrika Bux Singh, Rameshwar Prasad, Ram Dayal Vaidya, Devi Prasad Tewari, Brijraj Kishore and Bhagwant did Congress propaganda and worked for the respondents Nos. 1 and 2. In list W which is referred to in this para the names of two other persons Gur Prasad and Thakur Laxman Singh were also mentioned. The respondents admitted that Chandrika Bux Singh and Rameshwar Prasad worked for him but denied that they were mukhias. In respect of others they said that the full particulars of the men mentioned at Nos. 8 and 7 of the list W had not been given and that the other persons mentioned were neither mukhias nor workers of the respondents.

No evidence has been produced to prove that the persons mentioned in list W were actually mukhias. To establish this fact the petitioners should have produced extracts from the records kept in the Collectorate. The mere fact that some of the witnesses produced by the petitioners added the word 'mukhia' to the names of some of these persons cannot in our opinion be considered to be sufficient to establish that they worked as mukhias. In respect of most of these persons mentioned in list W no evidence has been produced that they worked for the respondents Nos. 1 and 2. So far as Chandrika Bux Singh and Rameshwar Prasad are concerned, even if it be conceded for the sake of argument that they were mukhias, the only thing which they are alleged to have done is that they worked as polling agents of the respondents. It is now well settled that a person serving under the Government does not commit a corrupt practice if he works as a polling agent, *vide* Staya Dev Bushahri vs. Padam Dev and others, reported in 10 Election Law Reports 103, and Mahendra Kumar vs. Vidyavati and other reported in 10 Election Law Reports 214. The allegations made in this para too are therefore not satisfactorily established.

**Para 28.**—It is alleged in this para that the respondents Nos. 1 and 2 distributed parchis like Ex. 1 to the electors. To some of the electors these parchis were given a day or two before the polling and to the others they were given at the Congress camps situated near the polling stations on the polling day. The parchis contained the name of the polling station, the circle of the patwari, the village, the number of voter on the voters' list and his name and his father's or husband's name. At the top of each parchi was printed a pair of bullocks with yoke without a circle and another pair of bullocks with yoke which was encircled. It was also printed on each parchi that the correct way of casting vote was to put one ballot paper in the ballot box with a picture of a pair of bullocks and the other in the ballot box containing the picture of a pair of bullocks in a circle. It is alleged that the voters were allowed to carry these parchis upto the place in the polling station where identity slips were given. There was also no prohibition about taking the parchis inside the booth. It is contended that this amounted to canvassing within the restricted area of 100 yards, and was a corrupt practice. Objections to this practice was raised at several polling stations like Sidhauli, Babupur, Kaluapur, Paintepur and Hamirpur mentioned in list X. The objections were however not heeded and the practice was not stopped except at one place.

On behalf of the respondents it is not denied that parchis like Ex. 1 were issued to the voters and they were allowed to take them to the place where identity slips were issued. It is however urged:—

1. That these parchis were not given to the voters within the restricted area. The distribution of these parchis could not therefore amount to carrying on canvassing within that area.
2. That the parchis were distributed only for the facility of the officer who was to issue the identity slips, the name and description of the voter being mentioned in the parchis.
3. That the distribution of parchis did not amount to canvassing because the parchis only indicated the correct way of putting the ballot papers in the ballot box in which the voters wanted to put them. There was therefore no question of canvassing.

Section 130 of the Representation of the People Act lays down—

- (1) "No person shall on the date or dates on which a poll is taken at any polling station, commit any of the following acts within the polling station or in any public or private place within a distance of one hundred yards of the polling station, namely—
  - (a) canvassing for votes; or
  - (b) soliciting the vote of any elector; or
  - (c) persuading any elector not to vote for any particular candidates; or
  - (d) persuading any elector not to vote at the
  - (e) exhibiting any notice or sign (other than an official notice) relating to the election.

Clause (2) of the section provides that any person who contravenes the provisions of Sub-section (1) shall be punishable with fine which may extend to two hundred and fifty rupees, and the third clause provides that the offence under this section shall be cognizable.

The first thing to be noticed in this connection is that section 130 of the Act is to be found in Chapter III of Part VII. Chapter III relates to electoral offences. Section 130 also makes any of the acts mentioned in clause (1) of it punishable as an offence. As was pointed out in the case of *Bikhab Das vs. Riddichand Palliwai* and others reported in 9 Election Law Reports 115, that setting up a canvassing office within 100 yards of a polling booth is an electoral offence but not a corrupt practice. So even if it be conceded that the issuing of parchis like Ex. 1 amounted to canvassing within the restricted area, the act could not amount to a corrupt practice but only amounted to an offence. Corrupt practices are detailed in Chapter I of Part VII. The major ones are mentioned in section 123 and the minor ones in section 124. Canvassing within the restricted area does not find a mention in either of these sections. The issuing of parchis like Ex. 1 cannot therefore be technically considered to be a corrupt practice.

Secondly the essential feature of section 130 is that the acts mentioned in sub-section (1) of that section must be committed within 100 yards of the polling station. Before the distribution of the parchis could be considered to be objectionable, therefore, it should have been established that the distribution was done within the restricted area. On behalf of the petitioners no evidence has been led to establish this essential feature. Reliance is however placed on the statement of Badlu (D.W. 12) who stated that Jurakhan had told him at a well in Kasmanda that he should cast his vote in the box containing the picture of the bullocks, that when Jurakhan told this to him, was at a distance of 20 steps from the place where the ballot boxes were kept and at a distance of 10 paces from the place where the ballot papers were issued to him. Jurakhan was admittedly a worker of the respondents Nos. 1 and 2. It is urged on the basis of this admission that canvassing was done within the restricted area. We are however not prepared to attach any value to the estimate of distance given by this illiterate and solitary witness. Jurakhan has been examined and is D.W. 12. He says that the parchis were given in the Congress Camp and that he did not even go inside the polling station on the polling day. The Congress Camp could not have been allowed to be held within the restricted area and must have been situated outside that area. It is not even alleged that at any place and particularly at Kasmanda the Congress Camp was allowed to be pitched within the restricted area. There is another witness who has stated that the well near which the Congress Camp was situated in Kasmanda was about 150 or 200 yards from the polling station. Obviously therefore the distance which Badlu mentioned had not been correctly estimated. It is, therefore, not established to our satisfaction that the parchis like Ex. 1 were issued to the voters on behalf of the respondent No. 1 within the restricted area. If the parchis were not distributed to the voters within the restricted area it cannot be said by any stretch of language that any canvassing was done within that area. Outside the area any number of parchis could be given and there appears to be no prohibition in the Act or in the Rules against the taking inside the polling station by a voter of any handbill or parchi which had been given to him by any of the candidates outside the restricted area. If therefore the parchis like Ex. 1 were given to the voters it was open to them to take them upto any place they liked, even upto the polling booth. Their taking those parchis to a place inside the polling booth could not amount to canvassing on behalf of the respondents or their workers.

In the above view of the case it does not appear to be necessary for us to go into the question whether what was printed at the top of each parchi could amount to canvassing in the sense of exhorting the people to vote for a particular candidate. If the parchis were not distributed inside the restricted area, the

practice of issuing parchis could not be stopped by the Presiding Officers and the objections raised in that connection on behalf of the petitioners must in the circumstances be held to have been rightly overruled.

*Para 29.*—The grievance made in this para is that at three polling stations viz. Mahmudabad, Sair and Hirapur the voters lists provided were incomplete. Objections were raised on behalf of the respondents as well as the petitioners and were noted down by the Presiding Officers concerned. The poll was however not stopped and even later when an objection on that ground was pressed at the time of counting of votes repolling was not ordered. It is urged that this amounted to a breach of section 57 of the Representation of the People Act and as a result of it a large number of voters at the three polling stations had to go away without voting.

The reply of the respondents to this contention is that the electoral rolls provided at the three polling stations in question were certainly incomplete but no voter went away without casting his vote. There was therefore no question of the polling being stopped or a repoll being held.

So far as Hirapur is concerned it is mentioned in the diary of the presiding officer that "voters" list for village Thatheri from serial number 401 to 450 on page no. 9 in the electoral roll was missing. It was detected at 5 p.m. on 26th February, 1955 and a duplicate of the same was prepared. So was the case with village Pahala from No. 582 to 600 page No. 12 which was also prepared at the same time. The poll was held on 27th February, 1955. It is therefore clear that the electoral rolls were corrected and made complete on the evening before the polling day. At Hirapur the electoral roll was not incomplete in any manner on the polling day.

The diary of the presiding officer of Sair has an entry in these words:—

"Electoral rolls of polling stations nos. 139 and 140 were corrected by the electoral roll of the presiding officer and as three pages of the electoral roll of polling station no. 140 were missing, pages from the presiding officer's copy were given before the District Election Officer who arrived on the spot about 12 a.m. Besides 16 numbers of electoral roll of the polling stations nos. 139 and 140 were missing in the electoral rolls but were in the presiding officers's list. Therefore they were and in the electoral rolls this entry was made by the presiding officer in the electoral rolls concerned."

The voters' list was therefore incomplete at this polling station but was corrected and completed with the help of the presiding officer's list.

What happened at Mahmudabad was this:—

It was discovered that some pages of the electoral roll beginning from serial No. 4000 were found to be missing. The polling agents of the respondents Nos. 1 and 2 as well as the petitioners filed objections and requested the presiding officer to complete the electoral roll by taking pages from the electoral roll possessed by the polling agents of the parties. He declined the request taking the view that it was not possible to use any list other than that provided by the authorities. What happened subsequently was noted down by the presiding officer in his diary as follows:—

"In consultation with the Election Officer I have decided to obtain missing pages of the electoral roll issued for polling station No. 112 from the parties. I will supply these to the identity slip clerk and polling clerk respectively. I now announce that electors whose numbers were missing so far may now cast their votes at polling station No. 112. It is now 1-30 p.m."

At 1-40 p.m. the presiding officer noted as below:—

"Shri Anwar Husain has given me one copy. Shri Shilama Charan has not been able to trace his out. So I have given those pages from the copy issued to me for use. Work is now going on according to my order passed above. It is now 1-40 p.m."

In a confidential note which the presiding officer sent to the Returning Officer on 28th February 1955 referring to Shri Raj Narain Singh, M.L.A. he said:—

The polling at the particular station at which the copies of the electoral rolls were incomplete be stopped. I replied, that it was a matter beyond my jurisdiction. He then left after reading from the

instructions issued by the Government regarding elections wherein it is given as to what should be the qualifications of a presiding officer. Soon after he left Sri Vishwa Ram made an application which I attached to the diary after passing suitable orders thereon. However there was no difficulty during the hours after lunch because before strating the polling at 1-30 p.m. I announced to the agents, as advised by you, that ballot papers would be issued at polling station No. 112 to the electors entered in between 4000 and 5000 and for that purpose I asked the contesting parties to give me the missing pages of the electoral rolls from the copies held by them. Notes appear in the diary regarding the said two applications made by Sri Anwar Husain and Sri Vishwa Ram respectively as also regarding the above noted announcement made by me at 1-30 p.m. It is also noted in the diary that I supplied the missing pages of the electoral rolls to the polling clerk and the identity slip clerk after having them from Sri Anwar Husain and from the copy supplied to me for the use of the presiding officer since Dr. Shyama Charan an agent of the P.S.P. candidate told me that he was unable to trace his copy."

It thus appears that in respect of polling booth No. 112 the electoral roll supplied was incomplete and the pages containing serial number 4000 to 5000 were missing. The missing pages were supplied at about 1-30 p.m. from the copy of the electoral roll provided by the agent of one of the candidates and then the polling was continued. In para 29 it was alleged that the electoral roll in respect of polling station No. 111 was also incomplete but this allegation does not find support from the notes kept by the presiding officer.

On the above facts two contentions are put forward on behalf of the petitioners. It is urged in the first place that on account of the electoral rolls being incomplete, for some hours, a large number of voters had to go away without casting their votes. This was not justified. The second contention is that under section 57 of the Representation of the People Act the presiding officer ought to have stopped the polling and a repoll should have been ordered. Even at the time of the counting the petitioners' request for repoll was turned down.

The first contention could have been given weight had the petitioners produced even a single voter to state that he had not been able to cast his vote because his name was not found to be present in the electoral roll at the time when he went to cast his vote. No such voter has been produced. The witnesses have generally stated that some voters went away. Sri Raj Narain Singh M.L.A. (P.W. 36) in particular has stated that he found 200 to 250 voters going away at polling station Mahmudabad without casting their votes. In cross-examination he however admitted that he could not say whether the persons whom he saw going away were voters or not. No weight can therefore be attached to the general allegations that voters could not cast their votes on account of the electoral rolls being incomplete for a few hours.

The contention that because the electoral rolls were found incomplete the polling should have been stopped appears to us to be entirely unjustified. Section 57 of the Representation of the People Act (leaving out the words which are not relevant for our purposes) provides:

"If at an election it is not possible to take the poll at any polling station or such place on account of any natural calamity, or any other sufficient cause, the presiding officer for such polling station, or the Returning Officer presiding over such place, as the case may be, shall announce an adjournment of the poll to a date to be notified later, and where the poll is so adjourned by a presiding officer, he shall forthwith inform the Returning Officer concerned."

It is urged that the incompleteness of the electoral rolls amounted to 'any other sufficient cause' contemplated by the section and on that account the presiding officers of the polling stations in question were bound to adjourn the poll. According to the ordinary and well accepted rule of interpretation however the words 'any other sufficient cause' must be interpreted *ejusdem-generis* and any cause which it is urged would fall within the expression "any other sufficient cause" must be analogous to the grounds enumerated before the use of the expression 'any other sufficient cause'. The grounds actually enumerated are 'riot, open violence or natural calamity'. The incompleteness of an electoral roll for a short time cannot by any means be considered to be analogous to such causes as riot, open violence or natural calamity. We are therefore not prepared to accept the contention that because for a short time the electoral rolls were found

to be incomplete the presiding officers were bound to adjourn the poll and to order repoll. As we shall presently show there are no materials before us on the basis of which it can be said that the election was materially affected on account of some of the pages of the electoral rolls at two of the polling stations being found to be missing though those pages were supplied within a few hours. It is worth mentioning in this connection that on 28th July 1956 the learned counsel for the petitioners stated expressly before the Tribunal that the petitioners do not want to produce any evidence in support of the allegations made in paras 29, 31, 34 and 35 of the petition. From this it appeared that the petitioners did not want to press the grounds put forward in those paras.

*Paragraphs 30, 31, 34 and 35.*—The grounds mentioned in these paras were not pressed before us and no evidence has been produced in respect of the allegations made in them. It is therefore not necessary for us either to mention the allegations or to discuss them.

*Para 33.*—It is alleged in this para that Sri Sant Shastri, Chairman of the District Board, Sitapur worked as a worker and agent of the respondent No. 1 and in that capacity promised to open primary schools in villages and to construct culverts and bridges and to give jobs in case the voters voted the Congress candidates. He added that in case they did not, the facilities would not be provided as he was in power. It was mentioned in list Z that the primary schools were to be opened at Patra Kalan and Falla, a pucca building was to be built for Primary School at Saraura, a new bridge was to be built at Pir Nagar in place of the old one and another bridge was to be built on river Goan near Phulpur.

The respondent denied all the allegations made in this para as well as in list Z.

The only evidence produced in support of the allegations made in this para consists of the statement of Shamsher Bahadur Singh (P.W. 9). He states that Sri Sant Shastri came to his village to reduce the strength of the Socialist party. He stayed in the village for two days and requested people to vote for the respondents. His request had no effect. He then called Suresh Prakash Singh to Tikra who promised to get a culvert and school built and threatened that if the people did not vote for the Congress candidates they would suffer great harm and would be illegally prosecuted. Thus this witness too did not state that Sri Sant Shastri promised to do any of the things mentioned in para 33 or in list Z. He also does not say that he threatened the voters that if they did not vote for the Congress candidates the things mentioned in the para would not be done. There is therefore no evidence worth the name in support of the allegations made in this para.

None of the allegations made in paras 24 to 27, 30, 31, 33, 34 and 35 have therefore been substantiated. No question of any corrupt practices mentioned in these paras having been committed can therefore arise. The facts which have been established in connection with paras 28 and 29 do not amount to corrupt practices as they do not fall within sections 123 and 124 of the Representation of the People Act.

*Issue 6 (b).*—No materials have been put before us on the basis of which we can hold that the allegations made in paras 24 to 31 and 33 to 35 even if established affected the result of the election materially or in any manner. It was urged at one stage that as breaches of certain rules or provisions of the Act were committed, it was to be presumed that the election had been materially affected and the burden lay on the respondents to show that it had not been so affected. It has however been finally settled by their Lordships of the Supreme Court that under the provisions of the Indian Act the Burden lies on the petitioners to prove not only that the breaches of rules and provisions of the Act were committed but also that the election had been materially affected by them (vide 1954 S.C. 513, *Vashist Narain Vs. Dev Chandra*, 1955 S.C.233, *Hari Vishnu Kamath Vs. Ahmad Ishaque and others*). The same view was taken in 8 Election Law Reports 139, *Sri Ram vs. Mohammad Taqi Hadi* also. In our opinion the burden that undoubtedly lay on the petitioners has not been discharged by them. In fact even an attempt has not been made to discharge it. It cannot therefore be held that on account of any of the allegations made by them in the aforementioned paras of the petition, the result of the election in dispute has been materially affected.

*Issues Nos. 3 and 4.*—In order to avoid repetition we propose to deal with these issues together.

The first question which arises for decision under these issues is whether the allegations made in the various paras of the petition mentioned in them are actually correct. The paras to be dealt with in this connection are paras 10 (b), (c), (d)

and (e), 11 to 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36. We have already shown under issue 6(a) how far the allegations made in paras 24 to 31 and 33 to 35 are established. It is not necessary to repeat that discussion.

Para 10 (b).—It is alleged in this sub-para that undue influence was exercised by the respondents Nos. 1 and 2, their agents and workers who openly gave out that no development schemes would be taken up in the constituency unless the people voted for the Congress candidates. The reason put forward was that the Government in power was the Congress Government. These persons also made promises to get the schemes materialised in case people voted for the respondents Nos. 1 and 2. The details of the promises made and the workers who made them, the places where they were made and the dates on which they were made are mentioned in list A. The respondents have generally denied the allegations made in this para as well as the details given in the connected list A.

Two things are noticeable in connection with the sub-para. In the first place what is mentioned in list A appears to be indefinite and confusing. The list has been divided in five sub-sections. A number of workers are mentioned in each sub-section along with several villages several dates and several schemes. It is not made clear whether each of the workers mentioned in the sub-sections made any promise in respect of each of the schemes mentioned in that sub-section in the villages and on the dates mentioned in it or whether some of the workers mentioned some only of the schemes on some dates at some of the places. It is therefore not possible to find out as to what the case of the petitioners was in this respect. We do not know what a particular worker said in respect of a particular scheme on a particular date in a particular village. If it was the case of the petitioners that certain workers definitely made promises in connection with any schemes at a particular village on a certain date, specific and clear allegations should have been made on the point.

Secondly in respect of the majority of items mentioned in this list no evidence has been produced at all.

The evidence that has been produced can be divided in four parts. Out of the witnesses examined P.W. 7 Kandhal P.W. 8 Karim Bux and Sudhar Kar Nath (P.W. 17) stated that the Minister of Irrigation attended a meeting at Puraina and promised that if people voted for the respondents a culvert shall be built in the village. A culvert in Puraina finds a mention at item No. 1 in the second sub-section of list A but among the workers named in that sub-section we find no mention of the Minister of Irrigation. P.W. 9 Shamsher Bahadur Singh states about a promise to build a school and a culvert in village Nawada. This finds no mention in list A at all. P.W. 21 Abdul Ali, Dr. Riasat (P.W. 22), Gur Saran Lal (P.W. 23), Ram Autar (P.W. 24), Gulab Chand (P.W. 25), and Prahlad Singh (P.W. 27) all belong to Mahmudabad. They state that promises were made by Sri Tara Chand and his workers including Sri Benarsi Das, Deputy Minister, that a zenana Hospital would be built in Mahmudabad, that a pucca road would be constructed in the town, that the school there would be raised to the status of an Inter-College and that the Tehsil would be shifted to that place. We find no mention in sub-section 4 of list A which relates to Mahmudabad about the raising of the status of the local school to that of an Inter College or about the shifting of the Tehsil headquarters to that place. Among the workers who are alleged to have promised to open a zenana Hospital or to construct a road we do not find any mention of Sri Benarsi Das or Sri Tara Chand. P.Ws. 29 and 30 Surendra Singh and Ram Singh state about a promise made to build qulabas in village Ataria. The promise is said to have been made by Sri Ram Murti, Irrigation Minister. Neither he nor the qulabas at Ataria find a mention in list A. It is thus obvious that while leading evidence on this point the petitioners lost sight of list A altogether and led evidence about facts which had not been put forward by them in that list. On this ground alone we think that the evidence on this point should be considered unreliable and no confidence should be placed upon it.

The petitioners themselves examined Sri Benarsi Das as their witness No. 42. He did not support the petitioners' case that he had made any promise at any place. Sri Tara Chand has also denied that any promises were made by him or his workers. We are therefore not satisfied with the evidence produced by the petitioners in respect of this sub-para or the list connected with it and would prefer not to rely upon it.

*Para 10(c).*—It is alleged in this sub-para that various election meetings held on behalf of the respondents Nos. 1 and 2 were organised with the help of Government officials and that Government officials advocated the services of the Congress Government and gave out that development schemes could only be possible with the help of the respondent No. 1 and the Congress. Particulars of such meetings and the officials who advocated the services of the Congress Government are given in list B of the petition. The respondents deny the allegations made in this sub-para as well as its connected list. The only thing that respondent No. 1 admitted was that they attended some Government functions as members of the Political Organisation but that at those functions nothing was said about the election. It is also said that most of the functions mentioned in list B had been held long before the election. Particular exception is taken to the allegation that Sri G. B. Pant visited any place in the constituency on 20th November 1954.

List B contains the names of 10 places where according to the petitioners certain functions or meetings were held which were attended by Government servants mentioned in column 3 of the list. Out of these 10 places no evidence has been produced that the Government servants mentioned in column 3 attended or participated in any meetings held at Kanchanpur, Jalalabad, Gopalpur, Bansura Bhandia, Bansura, Raipur and Suraicha. It is in respect of this last mentioned place that it was alleged that Shri G. B. Pant attended the Seed Store opening ceremony. The visit of such an important personage could not have gone unnoticed and it would not have been difficult for the petitioners to produce evidence about it. No attempt was made on behalf of the petitioners to substantiate this important allegation. It is noteworthy that in respect of many of the Government servants who are mentioned in column 3 of the list only the designation is mentioned and no names are given. In some cases only the word 'staff' is mentioned and even the designation of the officials concerned is not to be found. Even in respect of the meetings at Kunwarpur, Raipur, Bari and Mahmudabad though it appears that meetings were held, the case that the Government officials mentioned in column 3 of the list participated in the meetings does not appear to have been satisfactorily established. Vague allegations that certain Government officials were present cannot be enough for this opinion. In this connection specific names should have been mentioned and persons who knew those Government officials should have been examined to prove that they actually participated in those meetings. On behalf of the respondents it is suggested, and in our opinion rightly, that when any Minister or Deputy Minister goes on an official visit, the S.D.M. and some senior police officer is deputed to escort him. These officials however take care to remain away at some distance if the Minister or Deputy Minister holds or addresses any meetings. Simply because such officers are there to escort the Minister or Deputy Minister within their respective jurisdictions, it cannot be inferred that the officials participate in the meetings that are addressed by such Ministers or Deputy Ministers. No evidence also appears to have been produced to prove that any of these meetings were actually organised by the Government officials or that any Government officials advocated the services of the Congress Government or exhorted people to vote for the Congress candidates. Particular reference may be made in this connection to a function attended by Syed Ali Zaheer, Minister of Justice and Local Self-Government. On the occasion of the opening ceremony of a Seed Store and a Panchayat Ghar at Kunwarpur, such a function was admittedly held. According to Sri Tara Chand the function was a purely official function at which nothing was said about elections and this case of the respondents is supported by the statement of Syed Ali Zaheer himself which was recorded on commission. We think the statement of Syed Ali Zaheer should be relied upon in preference to the statements of the witnesses Surendra Singh (P.W. 29), Ram Singh (P.W. 30) who have been examined on behalf of the petitioners and the petitioner No. 1 (P.W. 35) on this point. The petitioner himself verified this portion of the petition on the basis of information received and not on the basis of personal knowledge. Still when he entered the witness box he stated that he had personal knowledge in respect of the matter. He had no adequate explanation to offer as to why, if that was the case, he had not verified that part of his case on the basis of personal knowledge in the petition. The statement of Surendra Singh (P.W. 29) about the date of the meeting is also not consistent with what is mentioned in list B.

The allegations in this sub-para 10(c) and list B are therefore not satisfactorily proved.

*Sub-para 10(d).*—It is said in this sub-para that as the workers and agents of the respondents Nos. 1 and 2 shouted an objectionable slogan 'Jo vote deho jhopriya man, to joota parihaan khopariya man', it amounted to the exercise of undue



influence. In that way the voters were threatened that if they voted for the petitioners they would be shoe-beaten. The persons who shouted the slogan the places where they shouted it and the dates when they shouted it are mentioned in list 'C'.

The respondents denied these allegations and characterised them to be false. On this point all the witnesses of the petitioners almost without exception stated that this slogan 'jo vote deho jhopariya man, to joota parihain khopriya man' was shouted by the workers of the respondents Nos. 1 and 2 at various places. It is true that they have deposed about the shouting of other slogans like 'Congress ko vote do, Socialist ko bhent do, Congress ko vote do, Socialist ko phenk/phoonk do' also. No mention is there in the petition in respect of these other slogans. On behalf of the respondents, respondent No. 1 as well as several of their workers have been examined. They state that no such slogans were shouted by them. One of the petitioners' witness Dr. Riasat (P.W. 22) mentions some slogans as those shouted by Congress people at Mahmudabad but the slogan objected to by the petitioners is not included in them. According to him the only slogans shouted were 'Gandhi Ji Zindabad, Maulana Abul Kalam Azad Zindabad, Jawahar Lal Nehru Zindabad'. There is one witness of the respondents however, Hulas (D.W. 26) who admits that the slogan 'jo vote deho jhopariya man, to joota parihain khopariya man' used to be shouted. He however adds that the slogan was shouted by Surendra Singh, a socialist worker. We find it difficult to believe that if the slogan was being actually shouted, it was being shouted by a socialist worker. The admission of this witness however shows that such a slogan was being used. This coupled with the evidence of the petitioners in our opinion establishes that some of the workers of the respondents Nos. 1 and 2 occasionally shouted among other slogans the slogans 'jo vote deho jhopariya man, to joota parihain khopariya man' also. There is however no satisfactory evidence to prove that the slogan was used in an organised manner throughout the constituency or that it was used by all the workers mentioned in list C at all the places and on all the dates mentioned in that list.

*Sub-para 10(e).*—It is alleged in this sub-para that the respondents Nos. 1 and 2 openly announced at a meeting in Mahmudabad that because the public had not voted for Shri Tara Chand in the previous election, they had successfully obstructed the construction of Mahmudabad road and the reopening of the Zohra Hospital. He threatened that if people did not vote for the respondents, no development schemes in the constituency would be taken up. For particulars of these allegations reference was made to list D of the petition. According to that list the meeting at Mahmudabad was held on 24th November, 1954 and the Congress workers who attended were 11 including Shri Tara Chand, the respondent No. 1. The respondents denied the allegations made in this sub-para along with the particulars given in list D. They contended that the allegations were false and that the contesting respondents had nothing to do with the obstruction or stoppage of the construction of the Mahmudabad road or opening of the Zohra Hospital. They say that they did not exercise any undue influence or use any threat.

List D gives the date of the meeting referred to in this sub-para as '24th November, 1954' and among the workers present there is a mention of Shri Tahir. From this it appears that this sub-para refers to the first meeting said to have been held at Mahmudabad on behalf of the respondents at the house of Sri Tahir. Two other meetings were held—one in connection with the opening of the hospital which was addressed by Sri C. B. Gupta and the other when Sri Benarsi Das visited the Hospital before it was formally opened. These meetings were not held in November 1954. It is therefore not necessary to deal with what was done at those meetings at this stage. So far as what took place at the House of Shri Tahir is concerned we have only the evidence of two witnesses Ram Autar (P.W. 24) and Prahlad Singh (P.W. 27) but they too do not say that Sri Tara Chand uttered any threats or admitted that he had obstructed the opening of the Hospital or the construction of the road at Mahmudabad. The only thing which he said according to these witnesses was that Sri Hanoman Prasad had tried to get a road built and a hospital opened but had not succeeded and if people voted for the Congress candidates they could be sure that these things would be done. This cannot in any way amount to threat or the use of undue influence. We think it is a part of normal canvassing to represent to the electors what advantages they would get by voting for a particular person. Abdul Ali (P.W. 21) also stated about this meeting at Sri Tahir's house and according to him no speeches were given at that meeting at all. Only talks were held. He did not say that any threat was uttered or that any undue influence was exercised. According to the respondents this meeting at Sri Tahir's house was really a preliminary meeting of the workers where directions were given to them to

work honestly and not to do anything which was objectionable. That the meeting was a private meeting is admitted by Prahlad Singh (P.W. 27) also. If it was a private meeting the case that these witnesses of the petitioners were allowed to be present at the meeting to hear what was being said there cannot be considered to be very probable. The respondents have examined two witnesses Hamid Asghar (D.W. 21) and Amir Chand (D.W. 34). Amir Chand is the Secretary of Mahmudabad Primary Congress Committee and must have been present at the meeting held at Tahir Ji's house. Both these witnesses have stated that nothing of the kind suggested by the petitioners took place in the meeting. The allegations made in respect of this meeting have therefore not been satisfactorily proved.

**Para 11.**—It is alleged in this para that at the meetings mentioned in list E Congress propaganda was done and official help was sought to impress upon the electors that all the development schemes were due to Sri Tara Chand and Baiju Ram. List E which is identical with list L contains a mention of 13 items. No evidence has been produced in respect of any meetings held in Ballai, Ferozepur, Khujurai, Behsura and Sidhauri or to show that at these places the persons mentioned in list E did anything for the respondents Nos. 1 and 2. We will deal with item No. 1 which relates to the visit of Sri Benarsi Das while dealing with para 16. The visits of Sri Ram Murti at Ataria, Raepur and Puraina shall be dealt with in connection with para 20 and the visit of Sri C. B. Gupta to Mahmudabad shall be dealt with while dealing with para 17. It has already been shown that the meeting at Mahmudabad held in November 1954 at the house of Tahir Ji was a private meeting in which nothing objectionable has been proved to have been done. It is worth mentioning in connection with this para and list L that in respect of the meeting dated 23rd February, 1955 it is noted in list L that the S.D.O., Tehsildar and local Government servants attended the meeting. No names or details of these officials are mentioned and satisfactory evidence too has not been led to prove that these meetings were actually attended by these Government servants.

It is therefore not proved that official help was utilized for impressing the electorate that the development schemes were due to Sri Tara Chand or Sri Baiju Ram.

**Para 12.**—It is alleged in this para that the respondents and their workers and agents exercised undue influence by administering oath in temples before Deities and with water to the voters. Particulars are given in list F. No evidence of any kind has been produced to prove this allegation about administering of oath.

**Para 13.**—Sri Vishwa Ram, Petitioner No. 2 claimed to have been a teacher in the Junior High School at Saraiyan. He alleges that the Secretary of the School who was a Congress worker threatened him that if he contested the election, he would be turned out of the school. When he refused to withdraw his name, he was actually turned out with the connivance of Sri Tara Chand. This allegation is denied by the respondents who say that the Secretary of the School was never a Congress worker and that Sri Tara Chand had nothing to do with the removal of Sri Vishwa Ram from the School. The only evidence produced in this connection is that of Sri Vishwa Ram himself. What Sri Vishwa Ram said in his statement was quite different from what is alleged in para 13 of the petition. In his statement he said that he applied for leave to stand as a candidate but got no reply. He then left the school without taking leave. After the election was over he was allowed to rejoin without any objection being raised. It is obvious that the incorrectness of the version put forward in the petition was the reason why he did not verify the allegations in para 13 on the basis of personal knowledge. The allegations cannot in these circumstances be said to have been established.

**Para 14.**—In this para it is said that the respondents Nos. 1 and 2 got votes by promising to the electors to get them jobs or to get licences for firearms or fireworks. The details are mentioned in list G. No evidence has been led in support of any of the allegations in this para or in list G.

**Para 15.**—In this para it is said that the Congress workers distributed identity slips. Some persons did not agree to accept those slips. On that account the houses of two persons Mewa Lal Kurmi and Dwarka Kumhar of Babupur were burnt and the leg of a horse belonging to Bhagwan Das was chopped off. These allegations are all denied by the respondents. Bhagwan Das, Mewa Lal and Dwarka have not been examined. The only evidence that has been produced consists of the statements of Holi Ram (P.W. 18) and Sri Vishwa Ram (P.W. 34). Both these witnesses are unable to state on the basis of personal knowledge that

anybody's house was threatened to be burnt or that the leg of anybody's horse was threatened to be chopped off. The house of Mewa Lal and that of Dwarka may have been burnt but there is no evidence to show as to who burnt them. The leg of Bhagwan Das's horse may also have been chopped off but there is nothing to show who cut it away. The learned counsel for the petitioners asks us to presume that all this had been done by the workers of the respondents 1 and 2. We think the presumption will be entirely unjustified. For all we know any enemies of the persons concerned may have done so to cause loss to them. It is also not proved that the persons concerned made any report to the police or that any inquiry was made as to who were the real miscreants. It is therefore not proved that the workers of the respondents Nos. 1 and 2 burnt any houses or chopped off the leg of any horse on account of the owner's refusal to accept the identity slips which they were distributing.

**Para 16.**—The case of the petitioners as put forward in this para relates to Sri Benarsi Das Deputy Minister. It is alleged that he was a worker of the respondents Nos. 1 and 2. On 27th December 1954 he attended four public meetings which were held at Sidhauri, Mahmudabad, Labraha and Bari. In all these meetings he exhorted the electors to vote for the Congress candidates. At Bari he promised to provide a midwife for the hospital. At Mahmudabad he promised to provide a well-equipped hospital. The workers of the respondents Nos. 1 and 2 told people that they should vote for the respondents because the development schemes were due to them and if they did not vote for them, they would be deprived of those facilities. The respondents Nos. 1 and 2 have denied these allegations except to this extent that Sri Benarsi Das attended a Congress meeting at Labraha.

Let us first take the meeting of Labraha which Sri Benarsi Das admittedly attended. According to the third item of list 'I' at that meeting he threatened police action to be taken against Prahlad Singh and his brother Mahabir Singh. He also said something about the opening of a hospital at Mahmudabad. Column 2 of the list contains the names and designations of the persons who attended the meeting. Some Government officials find a mention in this column but their names are not given. The only evidence produced in this connection consists of the statements of Prahlad Singh (P.W. 27), Sripal Singh (P.W. 37) and Sri Benarsi Das (P.W. 42). Sri Benarsi Das himself did not support the allegation that he threatened Mahabir Singh or Prahlad Singh in any way. No question was put to him on the point. On the contrary he says that no complaint was made at all to him about these persons. Prahlad Singh says that when a complaint was made to Sri Benarsi Das that he (Prahlad Singh) and his brother were influential persons and the Congress candidates would not get votes on their account. Sri Benarsi Das said that he would inform the police and it would look after them. Sripal Singh says that at that time Sri Benarsi Das said that he would get the two persons falsely challaned by the police in concocted cases. The versions put forward by the two witnesses are therefore different. Sripal Singh does not support the allegation that any Government servant attended the meeting at Labraha. None of these witnesses said anything about Sri Benarsi Das's promise that any hospital would be opened at Mahmudabad. On behalf of the respondents Nos. 1 and 2 Khalid Ahmad (D.W. 4), Mohammad Tahir (D.W. 6), Bansi Dhar (D.W. 7), Munir Ahmad Khan (D.W. 8) and Sri Tara Chand (D.W. 36) have stated that nothing was said in the Labraha meeting about election or voting.

At Mahmudabad Sri Benarsi Das went to inspect the hospital. It appears that the hospital building belonged to the Mahmudabad Estate. Negotiations were going on for several years for the transfer of the building to the Government for the opening of a well equipped hospital. The Raja of Mahmudabad was prepared to donate the building on certain conditions but the Government wanted to take it free of all conditions. On this account the hospital could not be formally opened. Subsequently when Raja Sahab agreed to give up the conditions he wanted to impose, the Government took the building and opened the hospital. Sri Benarsi Das being the Parliamentary Secretary to the Minister of Public Health went to see the building and at that time some people approached him to impress upon him the necessity of a zenana hospital at the place and he told them that the Government wanted to open the hospital and would do it as soon as the building was handed over to it. According to him no meeting was held which he addressed. Thus Sri Benarsi Das who is a witness of the petitioners themselves did not support the case that he addressed any meetings or made any promises or that he told people that amenities would be provided only if they voted for the respondents Nos. 1 and 2. Abdul Ali (P.W. 21), Dr. Riasat (P.W. 22), Gur Saran Lal (P.W. 23), Ram Autar (P.W. 24), Gulab Chand (P.W. 25) and Prahlad Singh (P.W. 27) have however been examined on behalf of the petitioners to say that

the meeting was actually addressed by Sri Benarsi Das and Sri Tara Chand and that they held out promises and said that the amenities would be provided only if the people voted for the Congress candidates viz. the respondents Nos. 1 and 2 and not otherwise. These witnesses do not appear to be reliable on the point. The version they have put forward appears to be exaggerated and sweeping. They have attributed many things to Sri Benarsi Das which he does not appear to have said. On this point therefore we have no hesitation in preferring the statement of Sri Benarsi Das to the evidence of all these witnesses.

Sri Benarsi Das admittedly visited Bari but says that he never made any speech there. He met some people in the Hospital there which he had visited as Parliamentary Secretary to the Medical and Health Department. People requested him to open a Maternity Centre there and he told them that the question would be considered under the second five-year plan. He therefore denied having made any promises to provide for a Maternity Centre as suggested by the petitioners and he also denies that any request was made to him for the transfer of Dr. Shyam Narain. Both the allegations made in respect of this meeting at Bari are therefore definitely denied by Sri Benarsi Das.

Sri Benarsi Das visited Sidhauri also and admits that he went to the place to open the Students' Parliament in the Swatantra Gandhi Vidyalay. His visit had nothing to do with politics and he did not hold out any promise to them. He thus does not support the suggestion that he held out any promise for raising the status of the school to that of an Inter-College for construction of Seed Store at Suraiha, for supplying hydro electricity at Sidhauri or for the construction of a Panchayat Ghar at that place.

Thus the allegations made in connection with Sri Benarsi Das in para 16 or those made in list I of the petition have not been satisfactorily established.

*Paras 17, 18 and 19.*—These paras are connected with each other and must be dealt with together. The case of the petitioners is that on the 6th of February 1955 Sri C. B. Gupta a Minister of the U.P. State opened the Zohra Female Hospital at Mahmudabad at 10-30 A.M. In the afternoon he addressed a meeting at Mahmudabad organised by the workers of the respondents Nos. 1 and 2. The meeting was attended by Government officials and in that meeting Sri C. B. Gupta exercised undue influence on the voters. At that time a procession of the P.S.P. workers was being taken out. The workers of the respondents Nos. 1 and 2 attacked the procession and caused injuries to Umarao Lal, Abdul Ali, Banwari Lal and Gur Saran Lal. The persons who attacked them were Babu Lal Sarpanch, Ram Din, Darogha Riyaz, Pradhan Chandpur, Baijnath, Mahabir, Mahadeo and Chhotkau Singh. A report was lodged at the thana under sec. 323/147 I.P.C. but the officials did not take any action. Sri C. B. Gupta approved of this action of the Congress workers and eulogised their services. The respondents Nos. 1 and 2 admitted that Sri C. B. Gupta visited Mahmudabad on 6th February 1955 and opened the Zohra Female Hospital at about 11 A.M. They also admitted that at about 3 P.M. he addressed a meeting organised by the District Congress Committee near the Hospital. They denied that any Government officials other than S.D.M. Sidhauri was present there. The S.D.M. Sidhauri was there to prevent any breach of the peace. Their version of the alleged attack on the procession is that a procession of the Congress was being taken out in the market at a considerable distance from the place of the meeting. A quarrel arose between the P.S.P. workers and the persons in the procession of the Congress and an incident happened. According to them Sri C. B. Gupta was not present at the meeting when this occurrence took place. He had no knowledge about it and did not approve of it in any manner.

It may be stated at the very outset that the version of the incident which the respondents Nos. 1 and 2 tried to set up at the trial was entirely different from the version which they put forward in their written statement. At the trial they said that shortly before the meeting started a procession of children led by some P.S.P. workers came towards the place of the meeting with the intention of disturbing it. Persons in the procession shouted slogans. Some of the Congress workers removed them to some distance without causing any hurt to any one. A false report was then lodged at the thana and naturally no action was taken.

Thus four grievances are sought to be made out in these paras:—

1. that Sri C. B. Gupta who addressed the meeting exercised undue influence;
2. that Government servants attended and organised the meeting;

3. that certain Congress workers injured the workers of the P.S.P. without any justification; and
4. that Sri C. B. Gupta approved publicly of the action of the Congress workers.

No evidence has been produced to prove that any undue influence was exercised by Sri C. B. Gupta in the meeting. No particulars of this undue influence were mentioned in the petition or in any list annexed to it. The witnesses who have been examined on the point only say that in his speech Sri C. B. Gupta said that a hospital had been opened, that a road would be built, that the Tehsil would be shifted to Mahmudabad and that the School there would be made an Inter-College. In the petition itself nothing has been said about these promises. If it was the petitioners' case that the making of these promises amounted to the exercise of undue influence, the promises should have been mentioned in the petition or the relevant list.

There is also no reliable evidence to prove that any Government servants actually attended or organised the meeting. The witnesses who have been examined on the point did not impress us as reliable or trustworthy. The petitioner No. 1 himself mentions the presence of the S.D.M. only. That the S.D.M. was at the place is not at all surprising. He must have been there with the Minister but the witnesses of the respondents have explained that he was sitting at a distance and was not participating in the meeting. His presence at some distance cannot therefore amount to his participation in the meeting. Several of the witnesses examined on the point say nothing about the presence of Government servants. This allegation cannot therefore be said to be proved.

A report was certainly made against some Congress workers at the thana but the report has not been filed. The injured persons are said to have been examined medically but no medical evidence has been produced to prove the fact. Two of the persons who are said to have been injured are Abdul Ali (P.W. 21) and Gur Saran Lal (P.W. 23). According to them Ram Adhin, the organiser of the meeting instigated the assailants to beat the children and they got injured while saving the children. Abdul Ali does not say who injured him or the children. Gur Saran Lal says that one Babu Ram hit the children. There is therefore no evidence in respect of the other seven persons mentioned in list J that they assaulted any one. In that list it is not alleged that Ram Adhin instigated any one to beat the children. On the contrary one Ram Din of Mahmudabad is alleged to be one of the workers who attacked the P.S.P. procession. In our opinion it is possible that the clash occurred because the Congress workers thought that their meeting was being disturbed and some one may also have received injuries in that clash but the petitioners have not been able to satisfy us that any deliberate attack was made on any one in order to overawe the P.S.P. workers or that the incident had any connection with the exercise of any undue influence over the voters. There is nothing on the record to show that any one suggested at that time that the persons who voted against the respondent would be beaten. According to Abdul Ali, the assailants were armed with lathis, kantas and ballams. The other witness mentions the use of lathis only. That the Congress workers went armed with so many weapons when the S.D.M. was standing at a short distance does not appear to be easy to believe.

The evidence that Sri C. B. Gupta openly approved of the action of the Congress workers who had caused injuries to some persons or eulogised their action has also not impressed us favourably and we are unable to accept the case that a person of the standing of Sri C. B. Gupta would so openly applaud such an action. On behalf of the respondents Nos. 1 and 2 D. Ws. Hamid Asghar (D.W. 21), Mohammad Husain (D.W. 25) and Amir Chand (D.W. 34) have denied the truth of the petitioners' allegations on this point.

Thus what is alleged in these paras too is not established to our satisfaction.

Para 20.—This para relates to Sri Ram Murti, Deputy Minister of the U.P. State. It is alleged in respect of him that on 3rd February 1955 with a view to do election propaganda he attended several meetings and invited the members of the public to put their demands about irrigation facilities before him. These demands were made and were duly accepted. Sri Ram Murti told the electors that these demands were being accepted on account of and at the recommendation of Sri Tara Chand. Some work was started to prove the bonafides of the promises but as soon as the election was over it was stopped. According to list K to which reference has been made in para 20 Sri Ram Murti attended meetings at 8 places, Ataria, Ballai, Bitholi, Puraina, Raepur, Ferozpur, Khajurla and Sidhauli. The respondents Nos. 1 and 2 admit that Sri Ram Murti visited the places

mentioned in list K on the date given in that list. They however say that the visits were the usual official visits of the Deputy Minister and had nothing to do with the Congress or election propaganda. No meetings were held at those places. The Deputy Minister only met certain persons and heard their grievances. He made no promises. He only told them that he would do whatever he could.

No evidence worth the name has been produced to show that any meeting were held or addressed by Sri Ram Murti in villages Ballai, Bitholi, Ferozpur, Kharajura and Sidhauri. Evidence has been produced only in respect of Ataria, Raepur and Puraina. Two witnesses—Holl Ram (P.W. 18) and Ajaipal Singh (P.W. 28)—depose about the meeting in Raepur. According to the former Sri Ram Murti promised to get a well and a minor constructed in the village if people voted for the Congress. According to the latter he promised to get a well, a chabutra, a hospital and a girls school built at the place. If that took place at Raepur was really a meeting on behalf of the Congress, the presence of those two persons one of whom is an old worker of the P.S.P. and the other who was himself a candidate at the bye-election (respondent no. 5) appears to be highly improbable. Moreover many of the promises which Sri Ram Murti is said to have made according to these witnesses are not mentioned in list K. The evidence on the point is therefore not at all convincing.

About the alleged meeting at Ataria the petitioners rely on the evidence of Surendra Singh (P.W. 29) and Ram Singh (P.W. 30). None of them belongs to Ataria. In list K in respect of this meeting no specific allegation was made as to what promises Sri Ram Murti had made. P.Ws. 29 and 30 are not definite about the nature of his promises. Surendra Singh says that he promised that arrangement would be done for the betterment of people in irrigation work, while according to Ram Singh what Sri Ram Murti said was that if people voted for the Congress, they would get advantage like qulabas.

Three persons—Dina Lal (P.W. 4), Kandhai (P.W. 7) and Sudhar Kar Nath (P.W. 17)—have given evidence about an alleged meeting addressed by Sri Ram Murti at Puraina. They differ from each other about the exact place where the meeting was held. None of these witnesses belongs to Puraina. None of them appear to be worth believing and their evidence is only of a general nature.

According to the respondents Nos. 1 and 2 no meetings were held either at Ataria, Raepur or Puraina. In course of his official visit to the locality as Sri Ram Murti was expected to pass, the Congress workers had informed the residents of the neighbouring villages that if they had any grievances in connection with irrigation matters they could put them before the Irrigation Minister who was passing by. Some persons therefore collected at these places and Sri Ram Murti heard what they had to say. He made no promises and there was no question of canvassing at all. In respect of all the three places the respondents have produced witnesses in support of their case. D.W. 26 Hulas of Ataria stated about what took place at Ataria, Chhail Behari (D.W. 28) stated what took place at Raepur and Jurakhan (D.W. 13), Ram Bilas (D.W. 17), Ram Lal Singh (D.W. 22) and Ram Bilas (D.W. 35) stated about Puraina. The evidence of these persons on the point appears to be preferable to that of the witnesses examined by the petitioners. It is therefore not proved that Sri Ram Murti held out any promises or told the people that amenities would be provided to them only if they voted for the Congress.

**Paras 21, 22 and 23.**—These paras contain general allegations about the respondents nos. 1 and 2 having perpetrated a fraud in the disguise of opening hospital, panchayat ghar, schools, seed stores etc. by way of congress propaganda in order to influence the voters. It is also said that the Congress Ministers had never before made so many visits in the constituency. Details in respect of these paras are mentioned in list L. All the allegations made in these paras and list L are denied by the respondents nos. 1 and 2.

A reference to list L will show that it refers us back to list F and B. List B deals with the participation of Government servants in certain meetings and list F to the administering of oath to the electors. We have already shown that the allegations made in both these lists are not proved. List L also refers to the meetings addressed by Sri Benarsi Das, Sri Ram Murti and Sri C. B. Gupta. We have discussed the allegations about these meetings too. In respect of the meetings at Bansura and Sidhauri no evidence has been produced. There is also nothing on the record to show that the Ministers made any special visits to this

constituency on account of this by-election and that they had not visited the constituency on earlier occasions. According to the respondents nos. 1 and 2 these visits were the usual visits of the Ministers in course of their official duties.

The allegations made in these paras too cannot therefore be held to have been substantiated.

Paras 24 to 30.—These paras have already been dealt with under issue no. 6.

Para 32.—It is said that Ram Prasad and Bhola Ram are two shop-keepers. They had taken some land from the District Board and built constructions upon it. The District Board had filed a suit against them in respect of the land. The contention of the petitioners is that Sri Sant Shastri Chairman of the District Board who was working for the respondents nos. 1 and 2 promised to get the case compromised in favour of these two persons if they gave their support to the respondents nos. 1 and 2. Murli Singh (P.W. 5) has been examined to prove this allegation. He is a neighbour of the petitioner no. 1 and is related to Mahesh Singh a socialist worker. The case that he heard a talk between the Chairman and Ram Prasad is not easy to accept. If the Chairman was really trying to influence Ram Prasad and Bhola Ram why should he have held the talk in the hearing of such a witness. Ram Prasad (D.W. 6) has been examined and denies the petitioners' allegations on the point. His evidence appears to us to be preferable to that of Murli Singh. The allegations made in this para are therefore not proved.

Paras 33, 34 and 35.—These paras have already been dealt with while discussing issue no. 6 (a).

Para 36.—No evidence has been produced in support of the allegations made in this para. So these allegations need not be discussed.

At the trial the petitioners led some evidence to prove specific acts of undue influence. 14 witnesses Bechu (P.W. 1), Kallu (P.W. 2), Hinga Lal (P.W. 3), Dina Lala (P.W. 4), Ram Autar (P.W. 5), Dore (P.W. 6), Kandhai (P.W. 7), Karim Bux (P.W. 8), Tribhuvan (P.W. 11), Shamsher Bahadur Singh (P.W. 9), Sheo Dayal (P.W. 12), Sheo Din (P.W. 13), Sripal Singh (P.W. 14), Gopal Singh (P.W. 16), and Holi Ram (P.W. 18) have tried to say that some of the workers of the respondents nos. 1 and 2 threatened them with personal harm or inconvenience in case they did not vote for the respondents nos. 1 and 2. Some of these witnesses have said that the threat was that they would be prosecuted, beaten, harmed and inconvenienced in other ways. We do not think it necessary to consider the evidence on this point in detail because these allegations are conspicuous by their absence in the petition or the lists filed along with it. It is well settled that (as laid down in *Muthiah vs. A. S. Subbaraj* and others reported in 7 Election Law Reports 165), "adding fresh instances of a corrupt practice cannot be regarded as a mere amendment of the particulars of such corrupt practice; on the contrary, each single instance of a corrupt practice is a substantial charge in itself which has to be alleged in the original petition. Consequently where a petition contains a charge of a corrupt practice and some instances are given it is not open to the petitioner to rely on other and similar instances of the same charge, (e.g. bribery) and adduce evidence in support thereof." Full particulars of instances of undue influence, bribery and corrupt practices have always been insisted upon in election cases. When these instances about which these witnesses have tried to depose were not alleged and the respondents nos. 1 and 2 had no opportunity of meeting them, we are not prepared to give any importance to the evidence of these witnesses on these points and have no hesitation in saying that these instances have been alleged by way of afterthought on which no reliance can be placed.

On this very ground we have also excluded from consideration certain other allegations made by some witnesses which find no place in the petition or its various lists. We do not think it necessary to refer to those allegations here because they are not there in the pleadings.

Having considered the facts we must address ourselves to the questions of law that arise under these issues (issues nos. 3 and 4). It may however be observed at the very outset that as stated by the learned counsel for the petitioners on 6th April 1956, the petitioners' case is confined to clause (a) of sub-section (1) of section 100 of the Representation of the People Act and does not fall under clauses (b) or (c) of that sub-section. That being the case it was necessary for the petitioners in order to succeed, to establish that the election in question had not been a free election by reason of the fact that corrupt practices of bribery or of undue influence had extensively prevailed at it.

Keeping in view the facts which we have found to be established four questions of law arise for consideration. They are:—

1. Whether the fact that the slogan 'jo vote deho jhopariya man, to joota parihe khopariya man' was shouted at many places by the workers or agents of the respondents nos. 1 and 2 amounts to undue influence?
2. Whether what took place at the meeting at Mahmudabad on 6th February 1955, immediately before the arrival of Sri C. B. Gupta amounts to undue influence?
3. Whether if the promises were held out
  - (a) by the respondents nos. 1 and 2 and their workers and agents, or
  - (b) by Sri Benarsi Das, Sri Ram Murti, Syed Ali Zaheer and Sri C. B. Gupta in course of their election campaign amounted to bribery or undue influence?
4. Whether it is established that bribery or undue influence so extensively prevailed at the bye-election in dispute that the election ceased to be a free election?

In connection with the shouting of the slogan it is contended on behalf of the petitioners that the slogan was shouted by the agents and workers of the respondents nos. 1 and 2 shortly before the bye-election was held. It was shouted in various villages and bazars. The obvious intention was to intimidate the voters and to impress upon them that if they voted for the P.S.P. candidates who had the symbol of hut, they would be shoe-beaten. No authority was cited on behalf of the petitioners in support of the contention that shouting of such a slogan would amount to the exercise of undue influence. The learned counsel for the petitioners referred to the case of Jujhar Singh vs. Bhairon Lall and others reported in 7 Election Law Reports 457. In that case one of the candidates was a Jagirdar. The other candidate was a Congress man. The Congress Committee published a poster containing the picture of a tenant tied up to a tree and a well dressed Jagirdar asking another who had a waving whip in his hand, to flog the tenant and the tenant's wife was shown lying prostrate on the ground. It was held that the publication of the poster amounted to the exercise of undue influence on the voters who were mostly illiterate villagers and fell under section 123 (2) of the Representation of the People Act.

In our opinion the persons who shouted this slogan could not have had any intention of shoe-beating any one or causing any personal injury to the voters who did not support the respondents 1 and 2. The slogan was shouted simply because it contained a catching phrase and 'jhopariya' rhymed with 'khopariya'. The slogan was not meant to be taken literally and nobody could have taken it seriously. One of the petitioners' own witness Sri Pal Singh (P.W. 37) states:—

"I did not object to the shouting of the slogan because it would not have carried any effect."

As was observed in the Norfolk (northern) case (10' m & H 236 at page 242), before a threat can be considered to amount to undue influence, the question must be put, was it a serious and deliberate threat uttered with the intention of carrying it into effect. If we apply this test there will not be much difficulty in coming to the conclusion that the shouting of the slogan could not amount to undue influence. According to the petitioners case this slogan was shouted for several months before the election was held. Not a single instance has been brought on the record in which the threat alleged to be contained in the slogan was carried out. Besides this slogan various other slogans were employed by both the parties. None of them can however be said to have been used with the purpose of directly or indirectly interfering with any person's free exercise of his electoral right. Even the workers and agents of the petitioners did not take any serious notice about any of the slogans and did not complain about them to any responsible person. We are therefore unable to accept the contention that the mere use of the slogan amounted to the exercise of any undue influence.

The case in 7 Election Law Reports 457 appears to be distinguishable in as much as a poster of the kind which was in question in that case cannot be put on the same footing as a slogan like the one which is in dispute before us.

What happened at Mahamudabad on 6th February 1955, can also not in our opinion amount to the exercise of undue influence on the electors. As we have held some sort of clash took place because the organisers of the meeting which was addressed by Sri C. B. Gupta thought that the members of the procession



taken out by the P.S.P. wanted to disturb the meeting. At that time there was no question of interfering with any one's free exercise of his electoral rights; nor was any person assaulted with that intention. The case that it was said at that time that persons who voted against the respondents nos. 1 and 2 would share the fate of the assaulted persons has in our opinion not been established satisfactorily. We therefore think that the incident in question too did not amount to the exercise of any undue influence.

We have already shown that the petitioners have not succeeded in establishing in a convincing manner that any promises were held out by the respondents nos. 1 and 2 or their workers, or agents or by the Ministers, Deputy Minister or Parliamentary Secretary concerned. But even if it be conceded for the sake of argument that such general promises were held out, that in our opinion cannot amount either to bribery or undue influence.

Undue influence is defined in clause (2) of section 123 as any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right. There is a proviso to that clause of section 123 which however provides:

"A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause."

In the case of *Linga Gowda vs. Shivananjappa*, reported in 6 Election Law Reports 288 it was laid down that "a leader of a political party is entitled to declare to the public the policy of the party and ask the electorate to vote for his party without interfering with any electoral right and such declarations on his part would not amount to undue influence under section 123 (2)". In *Ramachandra Chowdhuri vs. Sadasiva Tripathy* and others reported in 5 Election Law Reports 401 the view taken was that "a candidate who was a Minister was not guilty of a corrupt practice under section 123 (2) merely because during the course of his official tours as a Minister he conducted his electioneering campaign also." If therefore Sri C. B. Gupta, Syed Ali Zaheer, Sri Ram Murti and Sri Benarsi Das allowed the people, during their visits to put their grievances before them and promised to redress them, they cannot on that account be held to have exercised any undue influence on the voters with the intention of interfering with their right of franchise. They can only be held to have made a promise of public action. What they promised was obviously not meant for those persons only who voted for the respondents nos. 1 and 2. The benefit of those amenities would have gone to every person in the village or locality in question. Similarly if the respondents or their workers and agents held out any promises as to what the respondents would do, if they were elected or what others had not done or had not been able to do when they had been elected, these persons can only be held to have been bringing to the notice of the electorate the good points in their own favour or the bad points in respect of the rival candidates. In our opinion it is the right and privilege of every candidate and every party setting up a candidate to put before the electorate his or its views and programme so that the electorate may decide which of the rival candidates to prefer. Such election manifestos or programmes are quite usual in democracies and no serious objection has ever been taken in respect of them. Clause (b) of the proviso to clause (2) of section 123 appears to have been enacted with this purpose in view. No exception could therefore be taken in our opinion by the petitioners to the promises alleged to have been held out by the respondents nos. 1 and 2 and their workers even if it be held that such promises were actually held out. They could not in any way be considered to amount to undue influence. Nor could these promises amount to bribery as defined in clause (1) of section 123. In the case of *Swaminatha versus Ramalingam* and others reported in 2 Election Law Reports 390 at page 396 it was laid down that "the word gratification used in clause (1) of section 123 must not be interpreted narrowly but liberally and that the offer made by a candidate of land and cattle to the landless and the poor, irrespective of caste, creed, community and religion does not constitute an offer of such a nature as to constitute bribery." The promises alleged to have been made by the respondents nos. 1 and 2 and their workers also were not meant for the benefit of the persons who voted for the respondents nos. 1 and 2 alone. The things which were promised to be constructed or built would have been of use to every elector irrespective of the fact whether he voted for the respondents nos. 1 and 2 or for the petitioners or even if he did not vote at all. The petitioners have not succeeded, in our opinion, in establishing that the promises were made to induce any of the voters by unfair means with a corrupt

motive to vote for the respondents nos. 1 and 2 at the election. On that account they could not amount to bribery.

It is also not established that bribery or undue influence prevailed at the bye-election in dispute so extensively as to make it an unfair election. It is well established that extensive prevalence of the practice of bribery and undue influence cannot be established by a few instances only. Before it can be held to be extensive it should be proved to be general and indiscriminate so as to enable one to hold that it permeated the whole constituency and that there was no freedom of election as a result thereof. Nothing of this kind can be held to have been established on behalf of the petitioners.

In view of what we have said above we answer both these issues nos. 3 and 4 against the petitioners.

*Issue No. 8.*—No corrupt practices are proved to have been indulged in by the workers or agents of the respondents nos. 1 and 2. The respondents nos. 1 and 2 have however led evidence to prove that before their election campaign was started a meeting of their workers and agents was called at Mahmudabad and the respondent no. 1 gave definite instructions at that meeting that the workers should behave honestly and peacefully that only those workers should work for him who were prepared to be beaten or abused without having any idea of retaliation. He also directed them to put forward their own points of view before the electorate and not to do anything which could create any fuss or trouble. This part of the respondents case receives corroboration from D.W. 28 Chhail Behari, D.W. 34 Amir Chand Gupta and D.W. 35 Ram Belas who were all present in that inaugural meeting of workers. In the circumstances if any of the workers of the respondents nos. 1 and 2 did anything to which objection could be taken as amounting to corrupt practice it must be held to have been done without the knowledge, consent or connivance of the respondents nos. 1 and 2. No evidence has been led on behalf of the petitioners to prove that any corrupt practices were committed by the agents and workers of the respondents with their knowledge, consent or connivance.

*Issue No. 9.*—The result is that the petitioners are not entitled to have the election declared void or to get the relief which they have claimed.

The petition must therefore fail.

#### ORDER

Under section 98(a) of the Representation of the People Act the petition of the petitioners is dismissed. Under section 99 of the Act our findings are:—

- (a) that though there was a charge in the petition of corrupt and illegal practices having been committed at the bye-election in dispute, it is not proved that any corrupt practices were committed by any one.
- (b) The petitioners must bear their own costs and pay jointly to the contesting respondents their costs which we assess at Rs. 1,000 (one thousand rupees).

We order accordingly.

The 27th November 1956.

(Sd.) AMBIKA PRASAD SRIVASTAVA, Chairman.

Election Tribunal, Lucknow.

(Sd.) K. C. SRIVASTAVA, Member,

Election Tribunal, Lucknow.

(Sd.) S. N. Roy, Member,

Election Tribunal, Lucknow.

[No. 32/12/55/737.]

By Order,

A. KRISHNASWAMY AIYANGAR, Secy.